CREATING AN EMPLOYER-FRIENDLY REGULATORY SYSTEM

BEFORE THE

SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES, AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

APRIL 2, 1996

Printed for the use of the Committee on Government Reform and Oversight

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CREATING AN EMPLOYER-FRIENDLY REGULATORY SYSTEM

TUESDAY, APRIL 2, 1996

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL ECONOMIC GROWTH,
NATURAL RESOURCES, AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Auburn, WA.

The subcommittee met, pursuant to notice, at 9 a.m., in suite 1268, SuperMall of the Great Northwest, 1101 SuperMall Way, Auburn, WA, Hon. David M. McIntosh (chairman of the subcommittee) presiding.

Present: Representatives McIntosh and Tate.

Staff present: Mildred Webber, staff director; Karen Barnes, professional staff member; David White, clerk; and Liza Mientus, minority professional staff member.

Mr. MCINTOSH. Welcome to today's hearing of the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs. Thank you for coming and joining us today.

We are going to be having testimony on an extraordinarily important issue, one that Washington is still grappling with, and that is how we can perfect our regulatory system so that we don't cost jobs, don't harm people in our health care system, and yet have a cleaner, safer, healthier environment and workplace and places to live.

It's great to be here in Auburn. I want to thank my colleague, Randy Tate, for inviting the subcommittee to his district in order to hold this subcommittee hearing.

It's been a pleasure to work with Randy, one of my fellow freshmen, to help ease the burden of unnecessary redtape on the American people. And without Randy's help, our subcommittee wouldn't be able to report to you today our success in reducing the number of new regulations last year by 10 percent. And I think that's something that has started to make a huge impact in Washington since the subcommittee has been looking at regulations and finding out whether they make sense or whether they're necessary.

Now, one of the things that our subcommittee has decided to do since coming to Washington is to get outside of Washington——

Mr. TATE. District of Columbia.

Mr. MCINTOSH [continuing]. Outside of Washington, DC, as Randy points out, and talk to people, as Randy tells me all the time, in the real Washington, and hear what they have to say. And we've got several panels today and afterwards we're going to have what we call an open microphone period, where you're all welcome

to come and testify. Your testimony will become part of the record, as well as the panelists', so that we can hear from real people about problems they're having in their lives.

One thing that I think we've got to do is start getting Government off of our backs and back on our sides. And to do this, we need to hear from you and what you have been experiencing with working with these Government agencies.

I've been hearing from a lot of people—this is our 14th subcommittee hearing—and I want to share with you a couple of examples that we've heard so far. One of them was about a young girl named Tara Ransome.

Tara is an 8-year-old who had a birth defect called hydrocephalus, or water on the brain, and she's now one of the smartest kids in her class; she loves to read and roller skate and play with the other children. She came and spoke to our subcommittee about a remarkable medical procedure, a miracle of modern science that had saved her life.

When she was young, they implanted a small silicone shunt in the back of her head that could drain the fluid from her brain. And unlike children without that shunt, Tara is able to live a normal life, where, without the shunt, the water would gather on the brain, she would become retarded and would eventually die from that.

Well, part of the process is that she needs to have that shunt replaced every so often when she outgrows it or when the shunt becomes defective. She anticipates that within the next 5 years she'll need a replacement of that small medical device. But because of FDA's oversight of the use of silicone in various medical devices, Dow Corning is now no longer able to manufacture these devices and has, in fact, declared bankruptcy. And so Tara's mother is petrified that they're not going to be able to save their daughter and have that replacement when time comes up. She said at her testimony, "If we can't replace Tara's shunt as often as she needs one, we lose our future." And from her perspective, the regulatory process is not helping her young daughter and, in fact, has failed them by making this miracle of modern science less likely to be available. So it's desperately needed that we correct the regulatory process to help Tara and 50,000 other people like her. This is but one example of the type of things that we see over and over again in this subcommittee.

Another example I want to share with you was about Superfund. And many of you may know of the Superfund down in Tacoma where, I guess, Dunlap Towing Co. had been dumping smelter slag. They have been fighting and spending millions of dollars on legal fees, and not one step has been taken to help clean up that Superfund site. This is another example of a regulatory program where the money isn't used to help the environment, but it goes to pay for attorneys and consultants and is an area that we need to reform in order to do a better job of protecting the environment and creating a healthier and safer place in which to live.

Now, before we open up the hearing, I wanted to mention some things that have been happening in Washington in this area. Last week we made a historic step forward when we passed the first regulatory relief bill that has gone through Congress since 1980.

And this was a small part of the regulatory relief agenda that we had started with, but it did two things. One, it said that small business regulations will have an additional step in the review process to make sure that they do not unfairly burden small businesses. And second, we were required now that these regulations come back to Congress so that we have to vote on them before they go into effect and start changing people's lives. I think that will have a tremendous effect when the Congressmen and the Senators have to actually sign off on these new regulations. But there's a lot more that we have to do, and your testimony will be helpful to us in setting the record to accomplish those goals.

One is a new procedure called Corrections Day, and Randy has a couple of bills we're using there where we find a particular regulatory problem, we introduce a bill to say let's correct that and get back on track, and it has an expedited procedure in the House so that we can bring it forward and have it voted on.

A second is to change the way we write regulations to allow for cost-benefit analysis and good science to be used.

And a third is a measure that would help us protect private property rights when those are violated in the regulatory process.

Now, I'm proud of this subcommittee. It's one of the new ones that was created in this Congress. We've done a lot of work getting outside of Washington, hearing testimony from people, taking that back with us and working on these legislative proposals, and I'm particularly pleased to be here in Washington State to join Randy, who has been one of the most active members of our subcommittee and a leader in this effort. And with that, Randy, do you have any opening remarks that you'd like to make?

Mr. TATE. Sure. First of all, I want to thank everybody for taking the time to come out, especially the committee for taking the time, the staff and Chairman McIntosh. I got a chance to meet Dave, actually, the first time, at the Speakers Transition Team. Dave was selected to be a leader from the very beginning of our class. In fact, he's one of a couple in the whole Congress, freshmen, that are actually chairmen of subcommittees, which is really a credit to Dave. He's been a leader on lobby reform in Washington, DC, as well as regulatory reform, and that's the goal of this hearing today, to hear your ideas, suggestions, and maybe even some of your horror stories and ways to improve our regulatory process. And as Dave stated earlier, that written testimony will be accepted after the fact for those of you who have some suggestions or comments once you've heard the hearings today, if you'd like that to be part of the official record.

Now, there was a recent survey in the last year or so by the National Federation of Independent Businesses. That's the small businesses, and that's the vast majority of the businesses in this State. And they asked small businesses what your three biggest concerns were. Taxes were right up there close to the top, especially now, close to filing deadline of April 15, health care costs because it's obviously very difficult for small businesses to provide health care for their workers—they don't have the competitive advantages that large businesses have—but the one that came up over and over again was regulations.

The terms "regulations" and "paperwork" have become synonymous. Where you find one, you invariably find stacks of the other. And we see that over and over again. Let me give you a couple of examples. In the Bible, the Lord's Prayer is 66 words. And the Gettysburg Address is 268 words. The Declaration of Independence is 1,322 words. But Government regulations on the sale of cabbage are 26,911 words. There's a serious problem, and we need to bring some common sense back to the system. And at what cost? Some estimate that it's about $4,000 per household that higher regulations cost working families in this country.

In fact, you're going to hear things that you probably didn't ever think would happen right here in our own back yard, that overzealous regulators would raid a private business, hold employees at gunpoint, right here in Washington State. But you're going to hear about that.

One of Dave's and my favorite stories is the story about the bucket. The Consumer Product Safety Commission spent 5 years studying buckets. Now, it is a serious concern in the respect that a 5-gallon bucket, maybe an infant could fall into that bucket and drown. As the father of a 19-month-old child, you'd be concerned about that. But they studied this for 5 years and they came up with a report that one of the solutions would be to have a deliberately leaky bucket. And this comes right from their own study. "Industry representatives claim that they envision no use for a bucket that leaks." Well, no kidding. And the stories go on and on that we can tell you.

One of my favorite OSHA regulations is regarding hazardous waste and so forth. We need to train employees on the hazards of exposure to dangerous materials like chalk and dishwasher detergent. We need to reform our system and add a little more common sense to the way we do things.

We also mustn't lose the ground that we've gained in the past in protecting the public, but we need to be doubly sure that whatever solutions we come up with are real and sensible.

There is a book that recently came out called "Death of Common Sense," talking about conflicting, costly and burdensome regulations that ultimately cost jobs in this State. This Congress has been committed to coming up with commonsense solutions. As Dave mentioned a moment ago—Mr. Chairman—cost-benefit analysis, there is no small businessperson out there who doesn't make cost-benefit analysis decisions when they're going to do something new. We expect the Federal Government to do the same.

We also need to measure the risk, measure and have something called risk assessment to find out what the true risks are.

Another idea that we are working on and pushing hard is to ensure that decisions we make at the Federal level are based on sound science—not on fad, not on emotion, not on fiction, but on fact, what are the true risks out there, and should be based on a reputable science.

We're also interested in more cooperation and not contention, that business, employees, and workers and the Government work together to make the workplace safer, to ultimately create more jobs and a safer working environment. We want to ensure that

small business has a seat at the table when decisions are being made.

Corrections Day, as the chairman mentioned, is one of our ways to eliminate sometimes financially burdensome, ambiguous, arbitrary, sometimes ludicrous and downright silly regulations that are in our Federal code that we need to reform.

Bill Clinton in his State of the Union was very clear. He said the era of big government is over. Good. I agree with him. We need to restore common sense, give States more flexibility to meet the standards, and to have better management by local officials.

This Republican Congress and many Democrats in Congress are committed to solving these problems. We want real results and real protection. It's about making the public safe by improving working conditions, but ensuring that common sense is not forgotten through all the stacks of forms, rules and regulations, and that's what we hope to hear about today.

And with that, Mr. Chairman, I yield back the balance of my time.

[The prepared statement of Mr. Tate follows:]

Statement of Congressman Randy Tate

Subcommittee on Regulatory Affairs
Field Hearing
April 2, 1996

Thank you, Mr. Chairman. First, let me thank you for coming out to the beautiful Northwest. This field hearing is a wonderful opportunity for the Members of the Subcommittee to meet face to face with the small business owners who are directly affected by federal government regulations and the actions the Subcommittee takes to limit the federal regulatory burden.

I am pleased to see so many faces here today, many of whom I know well. These are the people that sent me to Washington, D.C. and the people for whom I work every day.

The topic of this hearing is a timely one, "creating an employer friendly regulatory system". I strongly believe my most important job as Member of Congress is to reduce the size and scope of the federal government and

balance the federal budget. If we accomplish this, people in the Ninth District of Washington and across the nation can run their businesses the best they know how without the long arm of the federal government limiting their time and money and the ability of their businesses to grow and create more jobs.

These are the people who work hard every day to take care of their families and their businesses. These are the people who provide jobs, products and services in our communities. This, Mr. Chairman, is what America is all about -- hard working people striving for the American dream. For too long, the federal government has expanded its reach, poking its nose into every aspect of the workplace. Government agencies pile on more and more regulations every year, often it seems, not for the sake of safety or consumer protection, but simply for the sake of regulating.

With little or no regard for the money, time, and effort small business owners and employers must use to comply with them, government agencies continue to impose more burdensome regulations. The federal government

has a choke hold on small businesses -- it is high time we let go.

The testimony we will hear from our witnesses today will come as a shock to many people. None of us would ever dream that overzealous federal regulators would raid a private business by force and hold employees at gun point - but it happened right here in my home state. At times it seems we are living in the nightmarish world created by George Orwell in his novel, 1984. Big Brother is alive and well in America today. It is our job as a Subcommittee to reign in this overgrown federal regulatory system -- to find the middle ground and bring reason back to government regulation.

It seems, all too often, that federal regulators crack down on the good guys when one bad apple creates a problem. Instead of dealing with individual businesses to correct isolated problems, federal regulatory agencies create new, prohibitive regulations with which every business and every employer is forced to comply. This, Mr. Chairman, is a backwards approach to regulation.

The American people sent a powerful message to Washington in the elections of November 1994. They too, are tired of regulations that inhibit economic growth and job creation. Now is the time to set our priorities straight and create a smaller, less intrusive government.

Small businesses are the backbone of our economy, providing 93 percent of all private employment in the United States. In our state, 98.3 percent of all businesses are small businesses. While small businesses employ more people than large businesses, the regulatory burden weighs more heavily on them than on large businesses. The costs of complying with federal regulations are enormous, while the benefits are few. The more we burden these employers with stringent regulations, the more we slow America's economic growth.

That is why I have invited you here today. The better we understand how federal regulation affects small businesses, the better we will be able to reform the system to provide long-awaited regulatory relief and allow these small businesses to create jobs and economic opportunity here, and in every

community across the nation.

Again, I'd like to thank everyone for coming today and you, Mr. Chairman, for bringing the Subcommittee to the great northwest to meet with my constituents.

Mr. MCINTOSH. Thank you. Thank you. I appreciate it.

With that, let's have our first panel come forward. This panel is on the Food and Drug Administration and their regulations on medical practices and devices. The two witnesses are Dr. Jonathan Wright and Mr. Timothy Cooke. If you would please come forward and take a seat at the table here.

One of the things that Chairman Clinger of the full committee has asked me to do is make sure that we swear in each of our witnesses so that nobody feels that they're singled out. So if I could ask both of you to please rise.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Let the record show that both witnesses answered in the affirmative.

Our first witness today is Dr. Jonathan Wright of the Tahoma Clinic. And Dr. Wright, why don't you tell us your experience with the FDA.

STATEMENTS OF JONATHAN WRIGHT, TAHOMA CLINIC; AND TIMOTHY S. COOKE, CHIEF EXECUTIVE OFFICER, THE ELECTRODE STORE

Dr. WRIGHT. Thank you, Mr. Chairman and Representative Tate. Thank you very much. I appreciate the opportunity to speak to you today.

I happen to be a medical graduate of the University of Michigan Medical School, 1969, and Harvard University in 1965. I've practiced medicine here in Washington since 1970.

Mr. Chairman, Representative Tate, you spoke of stacks of paperwork and regulations. Those are bad enough, but when guns enter into the situation, regulation has truly gotten out of hand.

On May 6, 1992, the staff at our clinic, which has not ever been able to imagine regulation at gunpoint, was raided by black-jacketed, armed King County police and Food and Drug Administration agents. Now, these gentlemen did not wear jackboots. However, they did have on black jackets and were bearing guns. They kicked in the door—with their regular shoes, not their jackboots—of the Tahoma Clinic and ran inside, yelling, "Raid! Raid! Raid!," which was surprising enough. But there were three guns drawn and pointed in the faces of our receptionist, our nurses, our technical staff. These guns were seen not only by our staff, but by folks who were waiting outside the clinic to enter. They saw these folks rushing through the door with their guns drawn. Of course, the clinic staff was, to put it mildly, surprised.

The staff was herded into the waiting room. One of the staff members, who had gotten on the phone to call our clinic attorney—she's a 110-pound woman with a cardiac irregularity—was grabbed by the arm and slammed into a chair by someone weighing at least 200 pounds. The telephone was ripped out of the wall and she was not allowed to call our attorney, which we thought we had some right to. Even criminals have that right. I'm sorry I didn't put that in the written testimony, but there are some things that are really outrageous I didn't get to.

When we were in the waiting room, the clinic staff was presented with a search warrant which said they were there to seize our B vitamins. Now, to quote a popular humor columnist—I'm not mak-

ing this up—they were there to seize our B vitamins at gunpoint. They also were in there after herbal remedies, botanical remedies, extracts from animal glands, which have been used in medicine for literally thousands of years, and some electrodermal testing devices which, to very briefly outline the safety, they're just about as dangerous as a lie detector machine and they work on the same principle, with electrical feedback. That's what they were there to seize.

By the way, they also emptied the clinic of a lot of equipment; they took people's personal, private, confidential medical records. We later found there was no Federal law or regulation against them doing that.

We had a 3-year, 4-month continuing criminal investigation. Now, the reason I underline that is that every time a member of the press would ask FDA what was going on, they'd say, "Hey, this is a criminal investigation. We can't tell you."

During that criminal investigation, by the way, my wife was strip-searched at the border when she was coming back from Taiwan because FDA had entered into Customs' computer that she was a drug runner. This is all over vitamin B, Congressmen.

It's not really my purpose to complain about all of this entirely. What I'm here to tell you about is that health care could be light-years ahead of where we are were it not for the Food and Drug Administration. Can you imagine where Microsoft would be if we had a Federal Computer Administration? We'd still be back with Amiga computers, or something.

There have been remedies available for cancer since the 1930's, which would literally get rid of half the cancers we have this minute if it were not for Federal regulations.

The Food and Drug Administration prevents people from putting on the label of bottles of vitamins that Harvard studies have found that vitamin E will cut down heart attacks by one-third to one-half. They prevent us from putting on the label of vitamins that folic acid will prevent our children from having birth defects. We cannot read that we can prevent our children from being born deformed—which the U.S. Public Health Service says is true—because the FDA won't let us. These are just three examples.

And if I could bring up some remedies, Congressmen, that are available to us right now, there are bills before Congress. One, H.R. 2019, called the Access to Medical Treatment Act, has a really revolutionary concept. It would allow anyone to receive any treatment that they would like for themselves, subject to appropriate consumer protection regulations. The second would allow the printing of the truth—this is H.R. 1951—on the labels of bottles of vitamins. Just the truth. No false or misleading statements. And the third remedy would allow pharmacists to continue compounding whatever the doctor orders for an individual patient, not for the entire world. Those three remedies would put us light-years ahead of where we are and would continue to protect the public. Thank you.

[The prepared statement of Dr. Wright follows:]

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2 APRIL 1996

Representative McIntosh
Representative Tate
other Honorable Representatives

Thank you for the opportunity to speak to you today.

I'm Jonathan Wright, a medical graduate of the University of Michigan Medical School,1969. and of Harvard University 1965. I've practiced medicine full-time in Washington since 1970.

Can you imagine regulation at gunpoint? Until the 6th of May of 1992, the staff of our clinic couldn't either! On that day, a group of flak-jacketed (but not jackbooted) police and agents of the United States Food and Drug Administration [FDA] kicked in the front door of Tahoma Clinic, and ran inside yelling "raid, raid!" Three guns were drawn, and pointed directly at receptionists, nurses, and technicians. The clinic staff was ordered into the waiting room, where we were presented with a search warrant demanding, among other items, our B-vitamins.

To quote a popular humor columnist, Dave Barry: "I am not making this up!" With absolutely no warning.....no regulatory letter, no telephone call, no legal proceedings at all....we were held up at taxpayer financed gunpoint for our vitamin B! Other items listed in the search warrant included injectable herbal remedies, glandular extracts, and electrodermal testing devices, none of which had ever harmed anyone in any way. None of these items are even close to addictive or narcotic.

Following this textbook example of regulatory overkill, we were subjected to 3 years, 4 months of continuing "criminal investigation". Seven of my co-workers left their clinic employment during this time because of the continuing stress. Legal costs were over one-quarter million dollars, almost entirely paid from a legal defense fund organized by patients and friends of the clinic. (We remain profoundly grateful to all of these individuals....without them our clinic would not have survived.).

In September of 1995, the "criminal investigation" was "dropped", without explanation, apology, or re-imbursement of costs. We realize this final outcome is routine for regulatory "public servants", and has occurred in many other cases. However, we respectfully submit to our honorable Representatives that this should not be the the behavior of a government "of, by, and for the people".

However, it is not my purpose to continue to complain to you about the armed, flak-jacketed "regulatory episode" at our clinic, nor about the literally dozens of similar raids perpetrated by this agency on other harmless citizens of these United States for the last several decades. For documentation of 25 of these occurring between 1985 and 1993, I refer you to Appendix B of this document, where you'll find complete details about Sissy Harrington-McGill, jailed for 114 days for the first-time, misdemeanor offense of mislabeling dog food, and other similar outrages.

Instead, I'm here to tell you of the world of better health that could have been, the parents, brothers, sisters, and children, the friends who would be here alive and with us today were it not for the United States Food and Drug Administration.

Have you lost a loved one to cancer? If it were not for FDA's ruthless regulatory suppression of effective, non-toxic cancer therapies (and even research) since the 1930's, the majority of all cancers could be safely and effectively cured by non-toxic means, today. Yes, that's the majority. Cured.

Has a parent, a brother or sister died of a heart attack? To this day, FDA forbids manufacturers from printing on the labels of vitamin E bottles that research groups from Harvard and other prestigious Universities have found vitamin E effective in preventing from one-third to one-half of all heart attacks. FDA regulations currently prohibit over 99% of truthful health care claims on package labels. *These regulations*

are lethal.

Do you know of a child with the lifetime tragedy of spina bifida? Until sued in United States District Court for the District of Columbia, FDA prohibited *under penalty of law*, the printing on the label of a bottle of the harmless vitamin folic acid the *true* information that such birth defects are *preventable* with this vitamin. On March 5, 1996, after the expenditure of over $100,000 in this lawsuit by Durk Pearson and Sandy Shaw, the National Health Federation, Citizens for Health, and the American Preventive Medical Association, the FDA finally reversed it's literally maiming, disfiguring regulatory position. Should supposedly free citizens of the United States be forced to spend over $100,000 and sue their own government to save our children, and our children's children, from a lifetime of suffering?

These are but three examples. There are hundreds more. Were it not for FDA and it's regulations, many of us would be sharing birthdays and Christmases and family celebrations with loved ones whose funerals we've had to attend. Not hundreds, not thousands, not hundreds of thousands, but literally millions of lives could have been saved, and tens of millions would have lived more healthy lives over the last 50 years were it not for FDA regulation.

What can we do to achieve a more healthy future for ourselves, our families, our communities? I urge you, plead with you, our Representatives and friends, to pass this legislation presently before the Congress:

H.R. 2019 / S. 1035, the Access to Medical Treatment Act. This legislation would allow an individual to be treated by any licensed health care practitioner with any method of treatment desired, FDA "approved" or not, provided the treatment does no serious harm, and the individual is fully informed, in writing, about the treatment

...nd it's alternatives.

Shouldn't free citizens of a free Republic have the absolute right to direct their own health care? Did Congress intend FDA to deprive us of this freedom?

H.R. 1961, the Dietary Supplement Consumer Information Act. This legislation would allow dietary supplement companies to ***Print the truth*** about their products on the labels? (False and misleading claims would still be subject to legal penalties.)

How can a free Republic tolerate an agency that exercises prior restraint on publication of the truth? Surely this is not the intent of our Congress!

H.R. 598, the Pharmacy Compounding Preservation Act. This legislation would preserve and protect the centuries-old practice of making and compounding prescriptions by licensed pharmacists.

Without this legislation, FDA has made clear it's intent to declare each individually compounded prescription a "new drug", subject to "approval", conservatively estimated at over 200 million dollars per "approval." Such action would not only result in loss of life from deprivation of thousands of valuable individualized compounds, but also enormously increase the cost health care.

Representatives, we recognize that the Congress has a multitude of important matters before it. But the health of our families, our communities, our nation is at stake. It can be enormously improved, and the cost of our nation's health care immediately reduced ***without the expenditure of a single taxpayer dollar*** by freeing us from the literally lethal burden of Federal regulation. Please restore freedom of choice in health care for your family and mine, our children, and our children's children.

APPENDIX A

SOME THOUGHTS, WORDS (AND ACTIONS) FROM SENATORS, CONGRESSIONAL STAFF, FEDERAL JUDGES, FEDERAL AGENCIES, ADVISORY COMMITTEES, FORMER FDA COMMISSIONERS, AND FDA ITSELF

FROM THE STAFF OF SENATOR ORRIN HATCH

"The Food and Drug Administration report, Unsubstantiated Claims and Documented Health Hazards in the Dietary Supplement Marketplace, released July 29, 1993 at a House Subcommittee hearing on dietary supplements, should be immediately withdrawn and the FDA should apologize to the Congress and the public for its release. This false and misleading document is so riddled with inaccuracies that it lacks any evidentiary value and raises serious questions about the motives of those who are responsible for its preparation.

"An analysis of the report.....reveals that FDA has ***knowingly submitted false information*** to Congress...."

"The Clinton Administration must take immediate steps to discipline those who have participated in the preparation and submission of this misleading document..."

---FALSE AND MISLEADING: FDA'S REPORT UNSUBSTANTIATED CLAIMS AND DOCUMENTED HEALTH HAZARDS IN THE DIETARY SUPPLEMENT MARKETPLACE, A Staff Report to Senator Orrin G. Hatch, page 1, October 21, 1993

FROM FORMER FDA COMMISSIONERS:

"People think the FDA is protecting them--it isn't. What the FDA is doing and what people think it's doing are as different as night and day."

---Dr. Herbert Ley, Commissioner of the FDA, San Francisco Chronicle, January 3, 1970

"THE HISTORY OF A CRIME AGAINST THE FOOD LAW : THE AMAZING STORY OF THE NATIONAL FOOD AND DRUGS LAW INTENDED TO PROTECT THE HEALTH OF THE PEOPLE, PERVERTED TO PROTECT ADULTERATION OF FOODS AND DRUGS"

---Title of a book published in 1929 by Harvey W. Wiley, M.D., first Head of the Bureau of Chemistry, predecessor to today's FDA, 1906-1912

"The activities of....so-called health food lecturers have increasingly engaged our attention....[we are fighting] the good fight against dried vegetables, mineral mixtures, vitamins, and similar products."

---Dr. George Larrick, FDA Commissioner; minutes of the Proprietary Association 1949 convention, White Sulphur Springs, Virginia

"(It is) not our (FDA) policy to jeopardize the financial interests of the pharmaceutical companies."

----FDA Commissioner Charles C Edwards, in testimony before the House Subcommittee on Intergovernmental Relations, 1970, as reported in "Who Blocks Testing of Anti-Cancer Agent", Alameda (California) Times-Star, August 3, 1970

UNITED STATES SENATORS SPEAK::

"The Food and Drug Administration is charged by Congress with an onerous responsibility---that of protecting this nation's health. Instead of shouldering this heavy responsibility, we find the agency engaged in bizarre games of cops and robbers. Instead of a guardian of the national health, we find an agency which is police oriented, chiefly concerned with prosecutions and convictions, totally indifferent to individuals' rights, and bent on using snooping gear to pry and to invade citizens right of privacy."

"If the Food and Drug Administration would spend a little less time and effort on small manufacturers of vitamins and milk substitutes and a little more on the large manufacturers of...dangerous drugs...the public would be better served."

--Senator Edward V. Long, 1965 hearings of the Senate Subcommittee on Administrative Practice and Procedure

FROM AN FDA PROSECUTION:

Despite the government's [FDA] multimillion dollar prosecution ***which included falsified testimony, later confessed by the government,*** the four defendants (including Dr. Stephen Durovic and Dr. Andrew Ivy) were acquitted...the jury went to the extraordinary length of saying it believed Krebiozen had merit and should be tested, on the basis of positive, well-documented testimony it had heard."

--David Rorvik, A defense of Unorthodoxy, Harper's Magazine, June 1976

THE GENERAL ACCOUNTING OFFICE:

"GAO [General Accounting Office] found that **of the 198 drugs approved by FDA between 1976 and 1985....102 (or 51.5%) had serious postapproval risks** ....the serious postapproval risks...(included) heart failure, myocardial infarction, anaphylaxis, respiratory depression and arrest, seizures, kidney and liver failure, severe blood disorders, birth defects and fetal toxicity, and blindness."

---GAO/PEMD 90-15 FDA DRUG REVIEW-POSTAPPROVAL RISKS 1976-1985, page 3

FROM A CITIZENS ADVISORY COMMITTEE TO
THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

"The Committee wishes to express its particular concern with the current state of FDA-industry relationships...these are found not to be based upon common understanding, trust and respect, but rather upon fear, questioning of basic motives, and lack of opportunity for discussion before drastic action is taken on violations, many of them minor and not related to health hazards.

"...there is a distinct feeling within the present Committee that FDA has used the recommendations of the earlier Committee to obtain considerably expanded staff and budget, but [FDA has ignored] important recommendations which...the expanded staff and budget would be able to achieve."

---1962 report of the Second Citizens Advisory Committee to FDA

SENATOR LONG: "Did you notice a tendency [by FDA] to spend a great deal of their time going after the little manufacturer rather than some of the large ones?"
WITNESS: "I have definitely noticed that....when a small company is purchased by a large company, the needling attacks...stop."
SENATOR LONG: "The merchandise becomes all right then?"
WITNESS: "Becomes sacrosanct."

---1966 Senate Subcommittee hearings

"The FDA...[is] actively hostile against the manufacture, sale, and distribution of vitamins and minerals as food or food supplements. They are out to get the health food industry and to drive the health food stores out of business. And they are trying to do this out of active hostility and prejudice."

---Senator William Proxmire, National Health Federation Bulletin, April 1974

FEDERAL JUDGES' OPINIONS:

"The FDA's broad definiton....subverts Congressional purpose... "
"...it defies common sense to say that a substance can be a food additive when there is no [other] food to which it is added... "
"Distorts the plain meaning of the provision... "
"The only justification for this Alice-in-Wonderland approach is to allow the FDA to make an end run around the statutory scheme... "
"Contrary to the intent of Congress... "

---Judges of the U.S. Court of Appeals, 7th Circuit, in the Traco Laboratories case, January 1993

"It apparently is FDA's view that if a company makes a claim that milk helps prevent rickets, milk suddenly becomes a drug."

---Federal Judge Lowell Jensen, District Court, San Francisco, in the Nutricology case, September 23, 1993

FROM FDA ITSELF:

"....Pay careful attention to what is happening [with dietary supplements] in the legislative arena...if these efforts are successful, there could be created a class of products to compete with approved drugs that are subject to less regulation than approved drugs....the establishment of a separate regulatory category for supplements could undercut exclusivity rights enjoyed by holders of approved drug applications."

---David Adams, FDA Deputy Commissioner for Policy before the Drug Information Association Annual Meeting, July 12, 1993, D-C-A Tan Sheet 11, July 19, 1993

"...the task force considered many issues in its deliberations including: to ensure [that] the existence of dietary supplements on the market does not act as a disincentive for drug development..."

---FDA Dietary Supplements Task Force Final Report, pages 3 and 71, June 1993, released June 1993

In December of 1991, Dr. John Vanderveen, Director of the Division of Nutrition at FDA Office of Nutrition and Food Science called the managing editor of The Journal of the American College of Nutrition inquiring about an article critical of the FDA. He asked that a copy of the article be sent to him, and material favorable to FDA be published in the Journal. He was told it was not policy to make articles available prior to publication. He then threatened the journal's editor and its Executive Director, Mildred Seelig, M.D., M.P.H., stating that if the Journal did not follow FDA's recommendation, FDA "would come down very hard on the American College of Nutrition."

---as reported in Food Chemical News, April 27, 1993

On August 22nd, 1956, FDA supervised the ***burning*** *of all Dr. Wilhelm Reich's scientific books , journals, notes, pamphlets, and "all documents" concerning his scientific experiments* as part of an injunction obtained against him because FDA disagreed with his theories.

---from pages 59-61 of The Pattern of Health, Aubrey Westlake, M.D., Shambala Publications, Berkeley, California, 1973, and a variety of other historical sources

Mr. MCINTOSH. Thank you, Dr. Wright, and we'll look forward to talking with you more during the question period on that.

Our second witness on this panel is Mr. Cooke. Thank you for joining us. Please give us your testimony.

Mr. COOKE. As Dr. Wright has so eloquently explained, the U.S. Food and Drug Administration is a Federal agency gone amok, even so far as to be considered a rogue agency by many in industry, medicine, and the public. In the past 10 years the organizational climate has become one of advocacy or, more accurately, social activism, rather than an agency of governmental administration. Under recent Commissioners, the agency has not been content to merely administer its original congressional mandate; it seeks to change American corporate and public behavior through an ever-expanding web of administrative rather than statutory punitive actions and, in some cases, inaction.

The anecdotal evidence, as Dr. Wright has just pointed out, of the agency's impact on American business is overwhelming. We could quite literally devote hours to discussing various examples. One is the totally noninvasive device that will allow women to self-diagnose breast cancer that the FDA has withheld approval on, causing a very small company, Inventive Products, Inc., to invest thousands of dollars in clinical trials, 9 years, and over $356,000 in legal fees, trying to get approved.

Dr. David Kessler, the current FDA Commissioner, asked for a voluntary moratorium on breast implant surgery, another outgrowth of the silicone issue that you pointed out, based on concerns that have now been overwhelmingly refuted by the best studies medical science can realistically mount. That one decision by Dr. Kessler created a field day for the tort bar, which extracted for itself more than $1 billion of the $4 billion-plus awarded to plaintiffs before the bankruptcy of Dow Corning.

In Physicians Financial News, the Associated Press reported a study by the Wilkerson Group, a consulting firm, that found 41 percent of the $93 billion medical device market is inside the United States. But the U.S. market share has dropped 20 percentage points since 1980 and is growing just about 10 percent a year, half as fast as the device industry abroad. Sixty-one percent of 526 companies said they are selling or planning to sell new therapies overseas first, citing FDA as the reason. Fifty-eight percent of companies said they were moving entire manufacturing plants to Europe, again blaming the FDA.

At last year's annual meeting of the American Academy of Neurology, one of our neurologists provided me with the May 10, 1995, issue of USA Today's cover story regarding Dr. Richard Worland. Dr. Worland is an orthopedic surgeon from Richland, VA, who invented an effective shoulder implant device to treat arthritis. Coincidentally, Dr. Worland needs the operation himself. Unfortunately, he will probably have to go to England to get it, because the FDA has not approved the device for sale in the United States market.

We're a 20-year-old company. We are the largest independent manufacturer of electrodiagnostic accessories. Most people are familiar with electrocardiography. It is the electrodiagnostic of the hearts. Electromyography, EMG, and electroencephalography, EEG, our specialties, are recorded in essentially the same way.

They use either small metal disks placed on the skin of either the scalp (EEG), (EMG), or needles which are inserted into the skeletal muscles to read the electrical activity in the peripheral nervous system. It took us 3 years to receive FDA approval for the disposable needles to do that study. I've included a chronology of FDA's approval process in the written testimony I've submitted. There is no way that 3 years should be devoted to the approval of a product that has essentially been on the market for almost 50.

Currently, our industry is awaiting the final implementation of a proposed final decision on performance standards for electrode lead wires and the banning of unprotected electrode lead wires from the FDA. This is a perfect example of FDA's activist mind-set that results in extremely expensive solutions imposed on an entire industry to solve a nonexistent problem. FDA ignored both written and verbal testimony by eminent practitioners in the industry experts in their insistence that all electrode leads, in all electrodiagnostic specialties, be converted to ensure that an individual could not insert a patient cable in a power source and achieve electrical connection.

It is costing our industry hundreds of thousands of dollars and delaying improved health care to patients. We are delaying new product development and business expansion, our customers are being denied access to devices that would enhance their diagnostic capabilities, their patients are being denied the improved health care that these new devices might bring, jobs are waiting to be created that will come with higher volume sales and new technologies. We appreciate your interest.

[The prepared statement of Mr. Cooke follows:]

THE ELECTRODE STORE™

2 April 1996

Testimony before the House Government Reform Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs

The US Food and Drug Administration is a federal agency gone amok, even so far as to be considered a rogue agency by many in industry, medicine and the public. In the past ten years, the organizational climate has become one of advocacy, or more accurately social activism, rather than an agency of governmental administration. Under recent commissioners, the agency has not been content to merely administer its original congressional mandate. It seeks to change American corporate and public behavior through an ever expanding web of administrative (rather than statutory) punitive actions and, in some cases, inaction.

The anecdotal evidence of the Agency's impact on American business is overwhelming. We could, quite literally, devote hours discussing various examples. Let me recount only a few:

A notorious example, published in the April 12, 1994 issue of The Wall Street Journal, was entitled "How a Device to Aid In Breast Self-Exams Is Kept Off the Market". The article recounts how FDA withheld approval, insisting that a small company, Inventive Products, Inc., invest thousands of dollars in clinical trials (not to mention 9 years and $356,000 on legal fees) on a non-invasive, non-pharmaceutical medical device, that years ago won approval in Europe, allowing women to effectivaly self-diagnose breast cancer. This FDA reluctance resulted in an innovative American company almost going bankrupt and thousands of women being deprived of the best available health care possible.

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In May 1995 the Journal recounts how the current FDA commissioner, Dr. David Kessler, asked for a "voluntary moratorium" on breast implant surgery, based concerns that have now been overwhelmingly refuted by the best studies medical science can realistically mount. That one decision by Dr. Kessler created a field day for the tort bar, extracting for itself more than one billion of the four-plus billion dollars awarded to plaintiffs before the bankruptcy of one of our large corporations. The lawyers' demands, meanwhile, are wrecking the research efforts of any scientists willing to tell the truth on this issue as science discovers it.

In Physicians Financial News, the Associated Press reported a study by The Wilkerson Group, a consulting firm, that found 41 percent of the $93 billion medical-device market is in the United States. But the U.S. market share has dropped 20 percentage points since 1980, and is growing just about 10 percent a year -- half as fast as the device industry abroad. Sixty-one percent of 526 companies said they are selling or planning to sell new therapies overseas first, citing FDA as the reason. Fifty-eight percent of companies said they were moving entire manufacturing plants to Europe, again blaming the FDA.

At last year's annual meeting of the American Academy of Neurology, one of our neurologists provided me with the May 10, 1995 issue of USA Today's cover story regarding Dr. Richard Worland. Dr. Worland is an orthopedic surgeon from Richland, VA who invented and effective shoulder implant device to treat arthritis. Coincidentally, Dr. Worland needs the operation himself. Unfortunately, he will probably have to go to England to receive the operation because the FDA has not approved the device.

The Electrode Store is a 20 year old company, privately held and the first independent supplier of electrodes and accessories to the fields of electromyography (EMG) and electroencephalography (EEG). You are probably familiar with electrocardiography (ECG) EMG, EEG and ECG provide the specialist with diagnostic information in essentially the same way, by recording the extremely small electrical impulses created

naturally within the human body. An ECG records these impulses from the heart, EEG from the brain and EMG from the skeletal muscles and nerves. The technology involved is fundamentally a computer with specialized diagnostic software and video capability connected to the patient by a group of electrodes. ECG uses small metal disc electrodes attached to precise locations around the heart. EEG uses either the same type metal discs or small needles arranged around the scalp. EMG uses either discs or longer needles placed on or into the larger skeletal muscles. The Electrode Store specializes in disposable EMG needle electrodes.

We have direct experience with FDA's organizational climate in two recent actions. New product 510(k) submissions and a pending proposed final ruling on banning unprotected lead wires.

I have attached a brief chronology of our only two 510(k) submissions. Luckily, our other products were developed prior to May 1976 and never required pre-market approval from the FDA. If we were a new company, with new technology, there is no way we could have survived for the three years required to satisfy anonymous, non-technical bureaucrats that we are only trying to make a profit providing safe and effective medical devices. The standards of our customers, as medical professionals, are such that our products must be competitive in quality and price or we will not succeed. After almost three years of waiting, as a result of a status check initiated by The Electrode Store in September 1995, the FDA informed our FDA consultant that they had lost our submissions. Submissions submitted in triplicate about which information had been exchanged for three years. We immediately resubmitted our latest responses to FDA questions. In responding to Representative Randy Tate's inquiry on our behalf, FDA framed the semantics to imply that we had not submitted the information and that was the reason for the delay. These are relatively minor examples of incompetent and duplicitous behavior, but even to a small company such as ours, this three year delay cost us approximately $1.5 million in lost sales.

Currently, our industry is awaiting the final implementation of 21 CFR Parts 895 and 897, Medical Devices; Performance Standards for Electrode Lead Wires and Banning of Unprotected Electrode Lead Wires. This is a perfect example of FDA's pervasive activist mind set that results in extremely expensive solutions imposed on an entire industry to solve a non-existent problem. Between 1985 (when the first incident was reported) and 1994 24 patients were subjected to electrical shock when electrodes applied to the patient's body were connected to a power source by untrained personnel unfamiliar with the equipment attached to the patient's body. These incidents have been limited to the electrodiagnostic fields of electrocardiography and infant apnea. Not once, in approximately 50 years of electromyography and electroencephalography and hundreds of thousands of patients examined, has a patient been injured in this manner. EMG's and EEG's are only performed by highly trained physicians and technologists. Patients are virtually never left unattended with electrodes attached. FDA ignored both written and verbal testimony by eminent practitioners and industry experts in their insistence that all electrode leads in all electrodiagnostic specialties be converted, to ensure that should an individual insert a patient cable in a power source no electrical connection be achieved. This sounds relatively simple, on the surface. However, we are all familiar with electrical connections from using common household appliances. The evolution of electrical connections has been that the female half of the connection is in the wall or within the machine. The male half of the connection is on the cord. The medical device industry has evolved along parallel lines. The FDA has used its administrative powers to impact, dynamically and negatively, medical device manufacturers, health care professionals and patients. This forced redesign of electrode connections and their computer interface has already cost hundreds of thousands of dollars that will ultimately be passed to consumers without providing one iota of improved health care or safety.

Let me point out that our concerns are with FDA headquarters and the policies, directives and priorities that issue from there. Our experience with local FDA offices and personnel have been satisfactory, both here and in California. Our electrodes have finally been approved, after Representative Tate's inquiry. Our industry has been forced too far into the connector modification to stop now. The only thing that might help with this issue would be the elimination of deadlines. Our position is that the organizational climate of FDA must change or the health of the American public will be endangered and the American health care industry crippled for years to come, if not forever. New medical devices and drugs that could save lives are being withheld for unnecessarily long times. Jobs are being lost, perhaps forever, when American companies move overseas due to the inhibiting regulatory climate. The Electrode Store is delaying development of new devices until your efforts at regulatory reform run their course. The FDA needs a commissioner that places the priority on ensuring new drugs and devices be made available to the American public as soon as possible. Self-righteous, socialist efforts to establish governmental control over all aspects of American life and economy that might be remotely within the jurisdiction of FDA could have only been this successful if those principles received support throughout the organization. American business has been depicted as greedy profiteers willing to endanger the health of the American public and the only organization capable of preventing thousands of American illnesses, injuries and death is an all-powerful FDA. While we plead guilty to pursuing profits, we disagree with the assumption that we would do so by foisting unsafe or ineffective products on unsuspecting neurologists and physiatrists. An aggressive FDA, with legislative support and media encouragement can stifle the growth of healthcare technology in the United States because innovative growth comes from law abiding companies such as ours. However, like gun control, no amount of legislation or administration is going to prevent dishonest or stupid people from committing dishonest or stupid acts.

The FDA's mission and authority should be drastically limited. We urge dynamic reform of the FDA, as put forward last spring by The National Medical Device Coalition, including performance standards; having drugs and devices regulated separately; reclassification of non-invasive or minimally invasive devices, such as our electrodes, as Class I devices. FDA has a place in ensuring the safety of Class III devices, let the market determine the effectiveness of Class I and II devices.

The Electrode Store is delaying new product development and business expansion. Our customers are being denied access to devices that could enhance their diagnostic capabilities. Their patients are being denied the improved healthcare that these new devices might bring. Jobs are waiting to be created that will come with higher volume sales and new technologies. We appreciate your interest and efforts at removing the artificial barriers to improving American health care and profits.

Mr. MCINTOSH. Great. Thank you for coming today, and your full testimony will become part of the record, so I appreciate that. In fact, let me mention, we've asked all of the witnesses to summarize their testimony in 5 minutes, which often isn't enough time, but that will let us have time for everybody to speak.

A couple questions came to mind, Mr. Cooke. Have they ever had an example of somebody sticking those wires into an outlet?

Mr. COOKE. Yes; in other electrodiagnostic specialties. Specifically, there have been 24 instances between 1985 and 1994, in electrocardiography or ECG and infant apnea. There are millions of patients annually who receive ECG examinations. A total of 24, and most of those were in infant apnea—I think there were only 2 or 3 in ECG—where somebody, an untrained person, either a nurse or a family member walked in, saw electrodes attached to the patients, not plugged into anything, reached over, grabbed the power cable and plugged them into a power cable. So, yes; it has happened, but not in electrodiagnostics, in our field.

EEG and EMG have been around for about 50 years. There have been hundreds of thousands, if not millions, of patients treated in those 50 years. Not once in our industry has it ever happened, yet we are included in FDA's net of banning these electrode patient cables.

Mr. MCINTOSH. And their solution is that you have to develop a different plug-in device?

Mr. COOKE. They're reversing it. Now, when you plug something in, the male is on the cord and the female is on the machine or in the wall. They want to reverse that and cause, in our case, the computer to have the male connection and all the electrodes to have the female connection. It sounds pretty easy, but it's costing hundreds of thousands of dollars. The doctors have to take all of their existing equipment, submit it for retrofit at anywhere from $600 to $1,000 per computer that they have in their laboratory, and it's causing us hundreds of thousands of dollars in tooling and duplicate inventories, because we've got to serve both sets of customers, the ones with the new machines and the ones with the old machines. And the FDA, once this final rule is in fact final—right now it's only proposed, I expect it to become final within days—they will give us 12 months for this entire industry to retrofit, and we will no longer be able to sell the old style cable. So all of that equipment transition is going to be compressed into 1 year.

Mr. MCINTOSH. Couldn't they have a second cable that you would plug into the machine?

Mr. COOKE. An adapter?

Mr. MCINTOSH. An adapter?

Mr. COOKE. The FDA has specifically stated adapters are not accepted, because they're a temporary fix. Somebody can find a way around an adapter. The fact is, what they're doing by passing this rule is trying to regulate stupidity. And they can pass another however many million word rule, and it's not going to prevent somebody from being stupid.

Mr. MCINTOSH. Yes, exactly. That's pretty incredible.

Dr. Wright, let me ask you real quickly, what was the final resolution after the FDA ended up raiding your clinic?

Dr. WRIGHT. After 3½ years they dropped the charges. Excuse me. They didn't file any charges in 3½ years. They dropped their case. They dropped the investigation. They announced to the newspapers that they were returning all of the equipment and patient records. That has not been done, and the case was dropped in September of last year.

Mr. MCINTOSH. And you still haven't gotten back all the records?

Dr. WRIGHT. We have not gotten back anyone's records, we have not gotten back any of our equipment. In fact, our attorney is having to negotiate for it to be sold to a Canadian company because FDA wants it out of their jurisdiction. We're not allowed to have our equipment back, even though they've dropped the case.

Mr. MCINTOSH. Do they have any jurisdiction over the type of equipment that was taken?

Dr. WRIGHT. They say that they do. Our attorneys say quite firmly that they don't, but it's never gone to court, so we have no adjudication.

Mr. MCINTOSH. And prior to the raid, had you had any contact from FDA?

Dr. WRIGHT. No. Congressman, we were puzzled for quite some time as to why FDA seized a roll of postage stamps, the ones with little flags on them, from our office. Our business manager finally figured it out. They never called us up on the telephone and said, "We don't like your stuff," they never sent us a letter saying, "We don't like your stuff," they never even sent us a postcard. We figured they were out of postage, Congressmen.

Mr. MCINTOSH. That's incredible.

Dr. WRIGHT. We had no warning. The first warning was when the door was kicked in and a gun was pointed in our faces.

Now, as an appendix to the testimony here, I have a number of quotations with sources from congressional staff, senatorial staff, Federal judges, Federal agencies, and former FDA Commissioners. And to quote two former FDA Commissioners: Dr. Herbert Ley, who was quoted in the San Francisco Chronicle as saying, "People think the FDA is protecting them—it isn't. What the FDA is doing and what people think it's doing are as different as night and day." That's a former FDA Commissioner, Congressmen.

And then, to illustrate your point, can you imagine them kicking in the door of Eli Lilly or any of the other giant pharmaceutical companies? A quote from FDA Commissioner Charles C. Edwards in testimony before the House Subcommittee on Intergovernmental Relations in 1970, "It is not FDA policy to jeopardize the financial interests of the pharmaceutical companies."

Mr. MCINTOSH. It's only Mrs. Clinton's policy to do that.

I agree with you. The enforcement powers the FDA has are much too intrusive, and we fought against that bill when I was working at the Competitiveness Council. We didn't see any need for them to carry guns, and I think your case helps prove that point.

The other one that you mentioned was the labeling regulations.

Dr. WRIGHT. Right.

Mr. MCINTOSH. And I agree with you on this truth in labeling bill, that FDA suppresses truthful statements, unless they have signed off on them, which to me strikes as a way of getting to Big Brother in this country, that the Government is deciding what can

be said, even though it's truthful, and won't let you say it until they're satisfied, for some other reason, that they want it to be said.

Dr. WRIGHT. Congressman, H.R. 1951, currently before you, would correct that. It would allow for telling the truth only. This lady's statements could still be prosecuted in court.

Congressman, National Health Federation, along with Citizens for Health and two other organizations, sued FDA in Federal District Court in Washington, DC. It cost our groups $100,000, and we sued them over their issue of putting on the label of the bottle of vitamins that if you take these vitamins you reduce your risk of birth defects for your child, which again is agreed to by the U.S. Public Health Service. We sued them over that, and it cost over $100,000. And just this month, Congressmen, FDA has proposed in the middle of court proceedings to reverse their stance as part of a settlement. I don't think it should take $100,000 and the efforts of all of us out here to sue our own Government to allow us to be told we can prevent our babies from being born with birth defects. That's unconscionable, Congressmen. And I'm sorry for the strong language.

Mr. MCINTOSH. No, but I think you're right. You've got to ask yourself from the standpoint of the average citizen, are we better off with the FDA or not, and in that case it's pretty clear that you're not better off because you don't get the truthful knowledge of how to prevent birth defects.

Now, obviously, there are other things they do that are very helpful in approving drugs and so forth. So what we have to do is reform that agency fundamentally, and have their mission be how can we best help the average citizen know that they are going to get healthier and safer treatments.

Dr. WRIGHT. Well, Congressmen, I'd like to quote, if I could, the General Accounting Office on your point that they do some useful things in approving drugs. I think Congress needs to direct them back to that area and ask them to do a better job in what they're supposed to do.

Here is a quote from General Accounting Office. The document number and so forth is cited right in Appendix A. "General Accounting Office found that of the 198 drugs approved by FDA between 1976 and 1985"—a decade—"102 of those drugs, or 51.5 percent, had serious post-approval risks"—now, post-approval risk is a risk that was either not disclosed or somehow slipped through the regulatory process—"post-approval risks of heart failure, myocardial infarction, fatal allergic disease, respiratory depression, cardiac arrest, seizures, kidney and liver failure, severe blood disorders, birth defects, fetal toxicity, and blindness." And this is in 51.5 percent of the drugs approved in the decade between 1976 and 1985.

I agree with you, Congressman, FDA certainly should be approving drugs. But General Accounting Office said that they're not even doing that. Now, these drugs are slipping through, causing people blindness, and our office is invaded with guns to arrest vitamin B? What's the matter with this picture?

Mr. MCINTOSH. Yes. You see that time and time again.

Randy, do you have any questions for this panel?

Mr. TATE. Does vitamin B do anything for hair?

Dr. WRIGHT. I believe, Congressman, that if you put it on your head and do a Northwest war dance.

Mr. TATE. I asked for that.

A couple of questions that I have—first of all, I appreciate the two witnesses, you've done a great job—for Dr. Wright. In your testimony you talk about the fact that friends and others have been able to assist you in your legal defense fund somewhere to the tune of about $250,000.

Dr. WRIGHT. Yes, sir.

Mr. TATE. What would you have done if you did not have that?

Dr. WRIGHT. We would no longer be in business, sir. Our clinic, despite the fees that we have to charge, gets by on a bare margin. It doesn't seem that way, but all of our accountants tell us so. And if it were not for all the members of the public—to whom I'm very, very grateful—in raising that legal defense fund, we would be gone, and the folks we see at our clinic would no longer be getting the type of health care they wish.

Mr. TATE. OK. Were you reimbursed?

Dr. WRIGHT. No.

Mr. TATE. In fact, there were no charges.

Dr. WRIGHT. No charges were filed.

Mr. TATE. No charges were filed—let me make sure I understand this—and everything was dropped.

Dr. WRIGHT. Right.

Mr. TATE. And you weren't reimbursed the $250,000 that it took to protect the clinic that serves thousands of people in the Puget Sound region and some people from around the world that come to your office.

Dr. WRIGHT. About a third of the folks who come to our clinic are from out-of-State; two-thirds are from our region. And no; we were not reimbursed.

Mr. TATE. I'd like to get to the issue of motive behind this, because I think this is important. I live in Puyallup, and I know if you read the newspaper accounts at the time that there was the implication of something, "illegal" going on at the Tahoma Clinic. Do you think the FDA was trying to—I don't know what the word is—frighten your patients?

Dr. WRIGHT. Yes, sir. Commissioner Kessler we have on tape saying that our clinic was manufacturing illegal drugs. We have him in an interview on tape. That was never mentioned in their search warrant or affidavit. Never. They never said a word to the Federal judge, and yet that's what he said on the tape. We don't manufacture illegal drugs. We don't manufacture anything, but that's what the Commissioner said.

Motive, though, is addressed in the affidavit to the judge in which they requested the search warrant. It says in FDA's own words that they started going through the garbage outside of our clinic to see what they could find in September 1991. By a strange coincidence, Congressmen, we had filed suit against FDA some 2½ weeks prior to that. And even the Seattle Post-Intelligencer said it would appear that this was revenge. This was not a regulatory action, purely.

Mr. TATE. And that's something definitely mind-boggling. If I went to the local grocery store, if I went to Fred Meyer's in the health food section, or if I went to Marlene's in Federal Way to their health food store, would I be able to buy vitamin B–12?

Dr. WRIGHT. Of course, you would.

Mr. TATE. I just wanted to clarify that. So they were breaking down your doors to catch you providing vitamin B. I should have brought some to show everybody how dangerous this product supposedly is.

Dr. WRIGHT. Yes. Right. You would be able to buy the entire B complex of vitamins, which is what they were there to seize.

Mr. TATE. Right. One last question. Any guess on how many patients would have benefited or could benefit from things that are currently not approved by the FDA?

Dr. WRIGHT. Literally tens of millions, Congressman, literally tens of millions. There are people dying in this country. And no exaggeration at all, if one had the time, I could tell you or we could write it out, there are literally millions of people dying in this country every year from things that are entirely preventable, that they are precluded from receiving by the Food and Drug Administration—millions of people. And the Access to Medical Treatment Act, H.R. 2019, would say very simply that anyone could go to a doctor, a licensed physician, licensed by their State, or other licensed health care person, and ask for their own personal sake, not to be sold in general, for any sort of treatment that that individual desires for themselves. And as long as that physician provided full disclosure, "Here are the risks, here are the benefits, here are the alternatives," and told that person that this is not an FDA-approved treatment, if that person decided to get it, they would have the right to take care of their own body in the way that they wish.

Now, Congressmen, any country in which the first amendment to the Constitution allows us freedom to believe in whichever way we wish, freedom of religion, shouldn't we have the right to take care of our physical selves as well as we take care of our souls in whatever way we thought? Well, FDA wants to keep us from taking care of our physical bodies, and I think if you gave them the power, they would probably want to interfere with the way we take care of our souls.

Mr. TATE. A scary thought.

If I may, Mr. Chairman, a couple of questions for Mr. Cooke.

Currently, if you were to file an application for a 510(k), statutorily you have 90 days to file that application. Is that correct?

Mr. COOKE. You cannot market the device at all until you receive 510(k) approval.

Mr. TATE. How many days do you have to complete that? It's my understanding that the statutory time for the FDA to approve is 90 days. How long does it usually take?

Mr. COOKE. Well, what the FDA claims and what is fact are two different things. Last year in the midst of searching for 510(k) approval on our devices, the FDA sent us about a 20-page expose of how well they were doing at reducing the backlog and how, nationwide, there were only 62 devices that had taken over the 90-day or 180-day timeframe. Well, of those, we know at least two of them were ours.

We also found some discrepancies as to how they keep the clock. In other words, whenever they respond to us, ask us a question, they reset the clock at zero until we respond, and then the clock begins again. Our devices which took 3 years to be approved, they say they took just over 6 months for approval. It's kind of like tax cuts. You know what I mean? A reduction in the growth actually constitutes a tax cut. Well, they measure time where 6 months is actually 3 years. I don't know how that works.

Mr. TATE. It's that new math.

Mr. COOKE. The Safe Medical Device Act of 1990 removed the statutory obligation for the 90-day performance standard from the FDA. They are no longer required to respond to us within 90 days.

Mr. TATE. What is the requirement?

Mr. COOKE. There is no requirement?

Mr. TATE. So it's indefinite.

Mr. COOKE. It's indefinite. We sat from October 1994, until September 1995, when we contacted them and they told us they had lost our submissions, and they never said a word to us. We knew nothing from October 1994, until September 1995, and then what we found out was that they had lost our submissions. Documents that had been submitted in triplicate, two different submissions, they lost both of them. Ironically, that was shortly after you made an inquiry on our behalf. And son of a gun, about 2 months after that, we got approval. I can't say whether there's a connection, but it does seem to be a little bit suspicious.

Mr. TATE. I don't know if it's in your testimony, but you and I have talked in the past about this particular situation.

Mr. COOKE. Right.

Mr. TATE. You stated at one time that potential lost sales was about $1.5 million.

Mr. COOKE. That's correct.

Mr. TATE. Have you made up those costs?

Mr. COOKE. No. Not even close.

Mr. TATE. How long do you think it will take you to make up those?

Mr. COOKE. To make up those costs? About 3 to 5 years.

Mr. TATE. About 3 years?

Mr. COOKE. I would guess 3 to 5 years. That has caused us to delay and defer sales, hiring, and everything else. We hope to start to increase production—and that is quite a bit different than sales, because production costs money—later this year, now that we do have the approvals. The approval for those products came in, one in November and one in December last year. And so, we're just now beginning to start marketing them, and we hope toward the latter part of this year and in 1997 to start to see some significant sales of those devices.

Mr. TATE. Of this device, what percentage of the overall cost of that device can you attribute to the Federal regulations and making up the costs that you lost during those 3 years?

Mr. COOKE. Contrary to what our accountant tells us to do, we do not pass those costs directly onto the device. We price the device separately and absorb those FDA compliance costs as a cost of doing business. So we don't recoup that from the sales of the device

directly. We're going to have to make that up over the sales of all of our devices.

Dr. WRIGHT. Congressmen, could I say one other thing here?

Mr. MCINTOSH. Yes, Dr. Wright.

Dr. WRIGHT. When you go back to Washington, DC, and listen to FDA, would you please, please keep this in mind. From the staff of Senator Orin Hatch in a report to Senator Hatch, "An analysis of the FDA report revealed that FDA knowingly submitted false information to the Congress." That's from Senator Hatch's staff. And then from an FDA prosecution of a doctor who happened to be chancellor of the University of Illinois Medical Center who had a natural treatment for cancer, despite the Government's multimillion-dollar prosecution which included falsified testimony later confessed to by the Government. Please be careful when you're dealing with this agency.

Mr. MCINTOSH. Thank you. I appreciate that. I appreciate both of you coming forward because I know this agency can be vindictive. And you have given us an incredible example of the abuse of agency power that I think all of us expected did not exist in this country when we have a country based on individual freedom, and in your case, Mr. Cooke, of a stupid approach that's costing patients needlessly and costing your company. So thank you both for coming forward. This is very helpful testimony. We appreciate it.

Let me call forward now the second panel of witnesses, three of Washington State's legislators, Senator Ray Schow, Senator Ann Anderson, and Representative Suzette Cook. OK, if you would all join me in raising your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Senator Schow, please proceed with your testimony.

STATEMENTS OF RAY SCHOW, STATE SENATOR AND OWNER, ALL-NIGHT PRINTERY AND ANP PUBLISHERS; ANN ANDERSON, STATE SENATOR; AND SUZETTE COOK, STATE REPRESENTATIVE

Mr. SCHOW. Well, first, I'd like to thank Congressman Randy Tate for this opportunity and, on behalf of the Washington State Legislature, welcome you to our great State of Washington.

As a small business owner and a State senator, I realize that no regulatory agency has a mission to depress the economy, raise the unemployment rates, or stifle production or creativity. However, many of the actions by Government regulators have those undesirable effects. The growing number of regulations, whether imposed by local, State, or Federal Government, raise the cost of doing business, undercut profitability, create a hidden tax for consumers, and severely reduce competitiveness. The Environmental Protection Agency says that the cost of complying with environmental regulations totaled $130 billion in 1994. When you add in the costs of other regulation by agencies from OSHA to FDA, the estimate is around $500 billion per year. Some of that cost is probably necessary, but a sizable portion of it comes from overregulation.

An experience that I had on a local level, and this is a very small one, but I think it shows how local regulations or Federal regulations can get out of hand. A few years ago the local fire department

came around for my annual inspection, and during the course of that inspection they asked me if I had any flammable materials that I stored. And I told them we did use some, but we bought them in small quantities, either 1-gallon or 5-gallon cans. And they advised me that with that small a quantity, I didn't need a special storage container for them, but that they would certainly appreciate it if I had one. Well, that seemed to be a pretty reasonable request, so we invested $800 to purchase a double-walled steel cabinet to put flammable liquids in. Now, this was when we were first getting started in our business. We were small, with just three or four employees, so $800 was a big investment.

But the following year, when they came back for their annual inspection, they said, "I see that you have a special cabinet for storing chemicals in, but we don't have record of a permit for that." The permit in the beginning was $50. I think now it's up to about $80 a year that we pay for the privilege of having this cabinet. And I think this example illustrates how bureaucracies use rules and regulations to charge fees.

I believe that most small businesses want to do what's right, want to maintain safe working conditions for their employees and protect the environment. But when Government becomes a controlling agent, rather than a facilitator to help small businesses achieve the goals that it and the agencies desire, something is wrong.

Now, what steps can be taken to change the current situation? I could outline more than two, but for the sake of time I've chosen what I believe are the two most critical changes that need to be made.

Congress should approve a benefit cost-analysis requirement for each stage of the regulatory process. It only makes sense to require agencies to follow a prescribed checklist when adopting new rules. They should be required to provide clear and convincing evidence that a rule is authorized, cost effective, consistent, and not redundant. If you can show that a regulatory activity generates an excess of benefits, that is strong evidence for continuing it. Too often, though, the benefit for either the worker or the general public is too small, while the cost is too great. These rules need to be revoked so we maximize safety and eliminate unnecessary burdens on the free-enterprise system.

The second thing is Congress should replace the current punishment system with one that hands out advice. Instead of a penalty for noncompliance, an agency should consult, advise and assist a company in following rules and regulations. Too often, agencies act as enforcement officers, slapping fines for noncompliance. This approach is counterproductive. The industrial police attitude sets up a showdown between the good guys, the business owners, and the bad guys, Government regulators. There are no winners in this situation. Instead, Congress should adopt a law that requires agencies to implement cooperative compliance programs. This proposal will require agencies to establish criteria for good faith compliance for a business and would allow time for correction before issuing monetary penalties. Thank you.

Mr. MCINTOSH. Thank you very much, Senator Schow. And in fact, I want to explore that second proposal with you in more detail in the questioning period.

Our second witness on this panel is Senator Ann Anderson. Thank you for coming today, Senator.

Ms. ANDERSON. Thank you, Mr. Chairman.

I just want to back up for a minute and talk about the 3½-year effort that we, in Washington State, have undertaken on regulatory reform. It was outlined to us in Washington as policymakers that a national kind of a headhunting group that site businesses had not been sending businesses to the State of Washington. One of the top reasons is because we have a more complicated and confusing regulatory system than most other States.

We also found that in Washington State, in order to start a business, a person has to face 35 sets of regulations from 18 Federal, State, and local agencies. And then, if you want to add employees, another 23 sets of regulations from 10 agencies apply.

Recognizing the concern of this and the detriment of losing 27,000 jobs because of business failures since the mid-1980's, Governor Mike Lowry convened a statewide task force on regulatory reform a few years ago. While we worked through a lot of suggestions, the one thing that I want to say that we kept in mind was the bottom line on any regulatory reform has to meet the end goals of a clean environment, safety of workers in the workplace, and safety of the citizens. I think the frustration in Government has come when we see that we still don't have a clean environment, we still don't have safe workplaces, yet piles and piles of new regulations have been written in the last few years.

I'll just go through the steps we looked at in a three-step process.

First of all, how do you write new rules under a better system? No. 2, after you have a new rulewriting system for good rules, how do you go back and review old rules. And No. 3, how do you change attitudes?

We found that in terms of writing new rules, we set some criteria in the State of Washington that agencies must follow. First of all, they are required to prove that proposed regulations do not conflict with regulations already on the books from some other agency. Second, they are required to look at the options for accomplishing the end goals and pick the least burdensome, least expensive, while still maintaining the end goals in sight. Third, providing new rules, we as legislators reviewed the agencies' ability and where they get their authority to write new rules, and we found that a lot of the times agencies are on their own authority, without legislative authority, writing rules, so, we changed in some agencies their grants of authorities so it tightens it. That's how we look forward to new rulewriting.

I must say that at the current time we still have not brought in a system of revising old rules. And what this is doing is you find that technology is moving much faster than the rules can keep up with, and so we're actually stopping some new solutions because of our inability to constantly update our rules, and I'll give you an example during the question and answer period, if you would like.

Fourth, and Senator Schow touched upon this, one of the things that in the past agencies have done to have a much better relation-

ship with businesses and actually meet our end goals of a safe workplace and a clean environment is they were more technical advisors than just fine leviers. When a business has a problem, if an agency person comes out and levies a fine, says they'll be back in 2 weeks and if you haven't fixed it, we'll fine you again, that really doesn't do anything to correct the problem. We need to have it outlined how you can stop accidents before they happen, how you can stop environmental disasters before they happen, and we need some technical advice from those agencies because, if you stop it up front, you then don't have to pay the consequences, and that comes with changing attitudes.

So in the State of Washington, we have started to change how new rules are written for more sensibility, we are attempting to review old rules for technology and, third, trying to change the attitude, and I think those three key points will serve you well in your quest to change agency rules and have a better business climate federally.

[The prepared statement of Ms. Anderson follows:]

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Testimony before the United States House of Representatives
Subcommittee on National Economic Growth, Natural Resources
and Regulatory Affairs

April 2, 1996
State Senator Ann Anderson, 42nd Legislative District, State of Washington

Regulatory Reform: Getting rid of the rules we don't need, and managing those we do.

THE PROBLEM

In order to start a business in Washington State, a person faces 35 sets of regulations from 18 federal, state and local agencies. Then, if employees are hired, another 23 sets of regulations from 10 agencies apply. A business fortunate enough to survive the sheer volume of government regulations then must deal with the impact of the regulations themselves. Today, agency rule making authority is so broad it defies restraint. As a result, established Washington businesses and new businesses are looking to locate elsewhere. Since the mid-1980s, an annual average of nearly 27,000 Washington workers have lost their jobs because of business failures.

THE SOLUTION

Lawmakers are the voice of the people. Only through us can they fight the red tape that is strangling their ability to earn a living.

- Lawmakers must stop the flow of new regulations.
  - ✓ repeal broad grants of authority
  - ✓ require proof that a proposed regulation does not conflict with regulations at other levels of government
  - ✓ require the adoption of the least burdensome and least expensive option
  - ✓ limit the lifetime of a new regulation without re-evaluation and documented proof that the regulation continues to be necessary

- Lawmakers must review existing regulations.
  - ✓ establish a schedule of legislative review of all existing regulations
  - ✓ require clear and convincing evidence that an existing regulation is necessary

- Lawmakers must change the role of agencies from "enforcement cop" to "consultant."
  - ✓ require a system of cooperative, voluntary compliance

- Lawmakers must authorize attorney's fees and other court costs to be awarded to a plaintiff who successfully challenges a regulation.

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Mr. MCINTOSH. Thank you. I appreciate this. That's extremely thoughtful, and I'd like to explore that more. You've got an ambitious program, it sounds like, and I'm very glad to hear of it.

Our third panelist is a member of the other body, Representative Suzette Cook. Thank you.

Ms. COOK. Thank you. Thank you, Congressman.

One of the things that is so clear is that many times Federal regulations, Federal laws, become disguised in their formation and disguised as under local jurisdictions due to the fact that the Federal Government will establish some rules and regulations that they look to the States to implement, and then the State may look at a more local jurisdiction for that implementation. The evolution of that law becomes very interesting as you follow it from what your original intent may have been to actually how it is implemented.

What I found very curious as I talked to some of the business people in my community most recently was, many times they don't associate Federal regulations with the Federal Government because their contact is not directly with a Federal agency, but with a more local agency. And we find this game of blaming picked up also by the cities and counties where they will say, "Well, we have to do this because the Feds require it." So that whole issue of who is to be held accountable somehow gets misplaced as we go through the process of implementing laws.

I'm going to give two examples of where it's very clearly attached to the Federal Government and just briefly, to hit on one of those, everybody knows their taxes to the Federal Government are directly related to the Feds. And just to give an example of the tax rate schedule—I won't spend much time on this—but it seems a bit ironic to me, especially the small- to mid-sized companies, how they're hit so unfairly, as you look at the rates, where you actually pay a higher rate in the midrange of profits than you do earlier on. And I did bring the tax rate schedule just to give you that example. But where it goes from 15 percent, 25 percent, 34 percent, 39 percent and then drops down to 34 percent at a certain point in time, that doesn't make sense.

So I won't go into detail there, leave the taxes. Those I know are possibly beyond what you're working on specifically here.

But another example that we can relate to directly in Kent, and I used to direct the Kent Chamber of Commerce for 11 years, and this example was with the permit process with the Corps of Engineers as it related to building an extension of a highway over the Green River, 16 years of debate with the corps because of the view that the Green River is a navigable river, even though there were two bridges upstream, already established.

What happens when you have a Federal agency that so blatantly does not recognize the realities of the situation?

Currently, we have the 277th corridor in the area where the money is in the bank for building that corridor, but the permit process alone is going to be 1 to 2 years just for the Corps of Engineers, even though everything else has gone through at the local level.

While some regulations have good intentions, another example of where regulations sometimes get beyond the technology that's

available is when we look at surface water management. A very well-intended policy is to clean out the traps of our surface water drains that we have. The irony was when it came time to implement that policy coming down from the Feds, there was no local business, no company set up to do that.

So what do we do? We grow Government at the local level to handle it.

My recommendation is that in developing a law, we know that through the process of rulemaking at the Federal level and then it goes through rulemaking oftentimes at the State and local levels, and it evolves from the point of what your original intentions may have been. The cost-benefit analysis that you may have applied when you developed that law needs to have an automatic checkpoint as it goes through the points of implementation, and built into the law or the rules themselves needs to be a trigger whereby you review the practicality of implementing a policy as it goes through this process.

Mr. MCINTOSH. Thank you very much. I appreciate the very thoughtful testimony from everyone on the panel, and it's triggered several questions I want to followup on.

In fact, Representative Cook, your mention of a need to review that, Randy and I had worked on legislation at the Federal level that would create a sunset review. And I wanted to get your thoughts and Senator Anderson's thoughts of one way we thought without changing the content or the mandate for any regulations that are in place, but one way to go back and look at the old rules to see if the technology has changed, to see if it's being practically implemented, to see if it is really needed, would be to require that every 7 years we'd look at those old rules—and we'd set up a scale so that you don't have them all bunch up at one time—and say, "How is it working?" And if it's not working, have it sunset so it expires and you have to replace it with a new rule.

By the time that this legislation that Randy and I had worked on in our subcommittee and took to the full committee reached the floor of the House, or was about to reach the floor of the House, they had taken out the sunset part, and all that was required was additional review, and we weren't very confident that that would lead to anything productive in changing the regulations. So we asked them to pull the bill, at that point, and let us continue to work on it so we could get it right the next time. But I wanted to ask your impression, as you're grappling with how to revise old rules, if you think that would be a helpful way to proceed.

Ms. COOK. Well, I'm not certain how you arrived at the 7 years. I know there's a thing about a 7-year itch that maybe needs to be scratched on some of the rules.

Mr. MCINTOSH. Seven seems to be a magical number in this Congress.

Ms. COOK. I have a concern with that kind of length of time. As you go through the early implementations of a policy, oftentimes that's when so much of the damage is done.

Mr. MCINTOSH. OK.

Ms. COOK. That's why I'm recommending something actually be built into the legislation itself. As you perhaps hit a certain level

of the cost, it could automatically go into a delay. Let me give you one example.

When this State was implementing the underground storage tank process, we literally, in the early implementation of that, ended up closing down hundreds of businesses across this State because they could not afford to have those old storage tanks uncovered. In one area in eastern Washington, it ended up being 75 miles between gas stations. Well, you didn't want to go low on a tank there. That was early. Your 7 years never would have made it.

Now, the State finally came forth and provided some loans and some assistance to those smaller businesses who needed that to do what again was a very good intentional law, but its damage was done early on.

Mr. MCINTOSH. The way it was implemented. So maybe for new rules coming on, we need to have a way of looking at them as they're first going into place.

Ms. COOK. That's correct, so a built-in process.

Ms. ANDERSON. If I could add to that, because, again, after 3½ years of discussion and 2 on the Governor's task force, we did talk exactly about how do you bring a rules review.

First of all we have, when we consider policy, a fiscal note that tells us what the projected cost of that policy will be. It was suggested that the legislature start to add to the fiscal notes a regulatory note so that it's outlined in front of you, before you pass the policy, which agency will be the lead agency, which agency will be writing those notes, are there other agencies that will come in subordinate to that lead agency in writing notes. So before you even pass a policy, you're thinking ahead on how the feasibility of writing the notes will come. So that's Suzette's example of having it come up front.

I think you're right that there needs to be some catalyst for review because we actually had a law in the State of Washington passed in 1982 that within 10 years all rules on the books would have to be reviewed. There was no pressure point, and the agencies said, "Gosh, we're so busy writing new rules, we can't review the ones we have now," and so it never happened.

Mr. MCINTOSH. So a review requirement without a sunset didn't work.

Ms. ANDERSON. It didn't work because there was no incentive. Also, Governor Lowry's director of the Office of Financial Management was on our committee and really led us to kind of a new way of thinking about an ongoing review because she says the cost of an agency reviewing a rule is as much as the cost of an agency proposing a new rule, so they were very concerned about the huge volume of rules that they would have to consider, and I agree with her. So we went for the thought that significant rules would be reviewed, those that do make some type of a policy statement and have some effect on the public. We have a lot of internal agency rules that just deal with the operation of an agency, really are not controversial and of concern, so, why review those. Let's exclude those and really update and look at those rules that are significant policy rules.

Mr. MCINTOSH. That's great. And this is very helpful to us. In fact, let me invite you, if you have any written materials from your 3½-year review or working with the Governor's task force, if you could forward those to us, that would be very helpful.

Senator Schow, did you think about any ways of changing the incentives for the agencies so that the employees there, the technical advisors, would be more helpful to the regulated community? Is there any way in which their feedback or their reward system in the agency could be changed so that they had shifted and decided, yes, this is a good approach to take toward this?

Mr. SCHOW. Well, I think it's just an attitude, and it probably comes from top management in the regulatory department or whatever department it is, an attitude of what their job really is.

I remember a few years ago I had an employee who got hurt on the job and filed an L and I claim. And they came out and informed me that I was out of compliance, I didn't have a safety committee—I think I had four or five employees, but I didn't have a safety committee, I didn't have up posters that I was supposed to. And being a little bit politically savvy, I went to my legislators and said, "Look, this has happened to me. I have no problem with complying, but I need help." And they said, "Well, we will get with Labor and Industries and have them help you." As soon as I did this, I haven't seen Labor and Industries in 15 years.

There's just no reason, because that's not apparently what they're directed to do is to help. They're directed to go out and enforce. I think we have to change that attitude.

But I think that the other thing that you have to look at as you're doing this, there's a tremendous difference between small businesses and large businesses. And in this area, we look at two of the companies that we're very proud of, the Boeing Co. and Microsoft, and one of them started out in a barn and the other one started in a garage. So small companies do become big companies.

But we need help knowing what we need to do to comply, we need help to know how we can do the right thing, in many cases, because of the small businesses. Mine being very typical, my wife and I both worked in it and we were a little bit of everything there. You just don't have time to sit down and get a book and study regulations and rules, and there has been no help coming or no direction coming from the government side, and I think that's going to be one of the important things that we do, if we're going to make regulations work. Even if we have good regulations, we still have to have that aspect of it to make it work.

Mr. MCINTOSH. Exactly. Exactly.

Senator Anderson, did you, as you were thinking about changing attitudes, have any things there, too?

Ms. ANDERSON. I did want to mention one specific case in the State of Washington that I wanted to let you know about because I think changing attitudes means finding positive solutions. With the Department of Ecology of the State of Washington it has taken a long time to have them help us push this positive solution.

Over in the Tri-Cities at Hanford, which is a terrible problem in terms of cleanup, they have actually come up and tested some hazardous waste—not nuclear waste—hazardous waste technologies that will clean up spilled oil sites or the gas tank leaks that Su-

zette was mentioning. They have done the testing, it's safe environmentally. In fact there are a lot of environmental groups that are excited about this technology, but at the Federal level there is a regulatory problem because once hazardous waste, always hazardous waste. And though this process renders the hazardous waste inert, and it actually could be, through the vitrification process, used to make other products like concrete Jersey barriers and things like that, the technology is there, the solution is there, and the regulation is getting in the way.

I think part of changing attitudes is to look for a positive solution. When you find something that's in the way, take care of it and go on. And I think by turning it around to a positive, then the people will have more confidence in what government is doing.

Mr. MCINTOSH. I'd love more information on that example. But I have been convinced in a lot of cases our regulations actually make it harder to clean up the environment. We have examples in my own State where they won't let a recycling firm work and, as a result, the local EPA people who are on their side are saying, we'll take 10 percent of your waste stream and throw it down the drain and then you won't be recycling and you can go ahead and do this if it's good for the environment. And to me, that's nuts. So I would be very interested in that example of where the regulations are a roadblock to actually taking care of that hazardous waste.

Randy, did you have any questions?

Mr. TATE. Sure, just a couple because I know time is short.

First of all, I'd like to thank—I'd like to say former colleagues, but we're still colleagues in this great battle to reform Government, and specifically regulatory reform.

I was told a long time ago that the nine most dangerous words in America, or scariest words, are, "I'm from the Government and I'm here to help."

Senator Schow, do you have any examples where you've had assistance from Federal regulators? We talked a little bit about attitude a little while ago, the attitude was more to work with and comply versus after the fact and write penalties or fines.

Mr. SCHOW. I've had my business since 1974. And other than a bulletin that may come out that tells you something, I don't believe there has ever been anyone from a Government agency that has been there to help me. And even though I cited the regulatory cost of having a cabinet for my chemicals, I think the fire department has done probably the best job on a local level, as far as coming around and going through your business with you and saying this could be a hazard or that could be a hazard and making suggestions, and, in most cases, not being real forceful, "If you don't do this we'll be back with a padlock for the door."

Mr. TATE. So there was an effort to comply and work with in cooperation versus contention.

Mr. SCHOW. Yes. We've been very fortunate in Federal Way. We have a fire department, I think, that's very open and very responsive to the businesses, but that's the only place I've really ever seen that kind of help.

Mr. TATE. One of our goals, the chairman and I and others in Congress on both sides of the aisle, is the belief that Government that governs closest to your house is probably the one that's going

to give you the best service. And it's less insulated. Your neighbor is your local fire department.

Senator Anderson, you talked a little bit about the whole issue of technology. I know the chairman talked a little bit about that. How do we update our rules. You said you wanted to elaborate on that earlier, and I'd be interested because technology is changing all the time. Intel, for example, their shelf life of their product is 18 months. It's incredible, the information changes that are going on. How do we keep up to deal with some of these?

Ms. ANDERSON. One of the things that we found in working with the State agencies is, for them, the process of getting off the books an old rule that's not applicable anymore is just as laborious as bringing on a new rule. In other words, they have to go through the same Administrative Procedures Act to take something off that is old as to bring something new on. So oftentimes what they do is they don't even bother, so you have old rules on the books, still, that really aren't applicable.

Mr. TATE. But if you're a businessowner, you want to apply because you don't know if it's going to be carried out.

Ms. ANDERSON. That's exactly correct. You don't know which ones then they are saying, "No, don't worry about it, we're looking the other way, we just don't have time to take it off the books." So again, what we look at is some way to expedite getting old rules off the books that are really not applicable and then an ongoing current review process.

The most recent example I have is in eastern Washington, in agriculture, they're processing hay in a different way. They've always baled it. Now, they're chopping it finer, and the Department of Revenue is writing a whole new set of rules as manufacturing versus just taking what's already on the books and updating that current rule to talk about chopping hay rather than mowing hay.

So if you have a system that you can concurrently expedite for old rules and review and just change easily for some new technology, rather than the whole APA system, which is very cumbersome at the State level and, I imagine, even more so at the Federal level.

Mr. TATE. It usually is only worse. One of the things that we have tried to do, and you may not have had a chance to hear the chairman's opening statement, the whole concept of Corrections Day might be something that could be modeled at the State level, the States around the country, as we have brought up legislation for rules that we think should be eliminated altogether, that are outdated, and bring them up on a kind of expedited process through the legislature to eliminate some of these.

So this is what's helpful, this kind of exchange.

You mentioned a minute ago about a regulatory note. Now, that is the cost to the Government. That's not the regulatory note for the businessowner in having to carry this out, or the cost.

Ms. ANDERSON. No, I think you're thinking more about the fiscal notes that we've always gone by, the fiscal notes for the Government.

Mr. TATE. Right. What it would cost the Government.

Ms. ANDERSON. Right. And we don't do fiscal notes for what it will cost the people to comply. We were thinking in terms of not

the cost of the regulation, just for the policymakers' own knowledge who is going to carry this out, what agency has authority. Then, when you look at what agency has authority, are there other agencies that may be in conflict in their own rules?

Again, the State of Washington Department of Agriculture, Department of Labor and Industries both overlap on pesticide safety. They've been working a couple years to try to figure out who has what authority. Up front, when we would have passed that policy and law, had we looked at the regulatory note in which agency would write the regulations, which agencies may be in conflict up front, we may have written it differently to be more clear up front.

Mr. TATE. I'll continue following up. I may call you after this. I've got some ideas. I like the idea of the regulatory note on what it will cost the actual employer or employee out there in the workplace.

Ms. ANDERSON. That was the discussion.

Mr. TATE. Because that's really ultimately what we're talking about, is this going to come on some employer and employee, either in the form of a lost job or increased cost of doing business.

Ms. ANDERSON. Right. And we cover that in the criteria that we have. When an agency goes to write a new rule, that's part of their checklist.

Mr. TATE. Kind of like the economic impact statement, so to speak.

Ms. ANDERSON. Exactly.

Mr. TATE. In closing, I just want to thank all of you.

Suzette Cook, I'd love to talk to you more about the Army Corps of Engineers. In my position on the Transportation and Infrastructure Committee, I would be real interested in ways that we can work to deal with that bridge situation and others like that and to learn from it. You all did a great job. I really appreciate your input.

Mr. MCINTOSH. Thank you so much. It's important for us to hear from people, like yourselves, who are working on this at a real practical level. We appreciate it. Thank you.

Let us call forward now our third panel, and this will be the last formal panel before we go to the open microphone. This panel deals with the OSHA and Department of Labor regulations, and it is Mr. Pat Cattin, Mr. Don Guthrie, and Mr. David Cornforth, if you would please come forward. Thank you all for coming today. And if you would all please stand and raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Please let the record show that each of the witnesses answered in the affirmative.

Our first witness is Mr. Pat Cattin. Thank you for coming today, and I understand that you're the owner of Cattin's Restaurant.

Mr. CATTIN. Yes.

Mr. MCINTOSH. Thank you. Please give us your testimony.

STATEMENTS OF PAT CATTIN, OWNER, CATTIN'S RESTAURANT; DON GUTHRIE, VICE PRESIDENT, WAYNE'S ROOFING, INC.; AND DAVID CORNFORTH, CO-OWNER, CORNFORTH-CAMPBELL PONTIAC, BUICK, GMC, ACCOMPANIED BY KEITH SHEA, EMPLOYEE

Mr. CATTIN. Good morning. My name is Pat Cattin, and I live in Federal Way, WA, and I own and operate a chain of eight 24-hour restaurants in Washington State, Montana, and Nevada.

I started my business in 1982 in Missoula, MT. I currently employ approximately 260 people.

In 1992, a disgruntled former employee of our Tacoma restaurant made calls to every city, county, State, and Federal authority, alleging violations of building permits, public health, job safety, and wage and hour laws. Apparently, this was done to get back at the manager of the restaurant for terminating her employment. We received calls from some of the authorities and visits from others. None of this attention resulted in any citations being issued, except from Washington State's version of OSHA, WISHA. This acronym stands for Washington Industrial Safety and Health Act. It's my understanding that this agency is required to operate under strict compliance with Federal rules from OSHA. Clearly, these laws are one-size-fits-all, having been written in some office in Washington, DC by a person who knows best for me and my employees, having never been to my restaurant.

The WISHA officer came to our restaurant and conducted an inspection. At the time of inspection, we were written up for five violations. These violations included: No. 1, having the back door to the restaurant locked—and, being a 24-hour restaurant, an unlocked back door is an invitation to steal; No. 2, not having all doors in the back of the house labeled with a sign designating their purpose; No. 3, missing 1 of 11 MSDS sheets; No. 4, not having a properly stocked first aid kit—we were missing Band-Aids and aspirin; No. 5, not having employee-run safety meetings and keeping written records of the meetings.

Our restaurant received a notice in the mail a few days later listing these violations. Along with the notice we received an invoice for $4,900. The notice told us of our rights and the method to appeal the findings.

It's important to note that in my 10 years of operating this and seven other restaurants, this was the first time I had knowledge of a WISHA inspection of any of our restaurants, and it was the first time WISHA had ever inspected the Tacoma restaurant. I later found out that WISHA had inspected my restaurant in Tumwater, WA, 5 years earlier, but the agency dealt only with our store manager, who had a vested interest in keeping the information from me. This inspection in Tumwater did not lead to any fines.

I did appeal the violation notice and fines from the Tacoma restaurant. It took a number of hours to review the State claims with our people and prepare our response. A few weeks later I presented our side to a review officer.

First, we explained that the back of the restaurant did not require an emergency exit through the back door, as there were two other doors allowing escape from the area. And after reviewing the

building code and detailed drawing of the restaurant that we had made, the review officer agreed with us, and the fine was removed.

Second, since we claimed that the back of the restaurant was not an emergency exit, the doors at the back of the house did not need to have signs on them designating their purpose. There are only seven doors in the back of the restaurant, with little chance for confusion, and the officer agreed with us, and the fine was removed.

Concerning the MSDS sheets—this acronym stands for Material Safety Data Sheet—it's a single 8½ by 11 sheet of paper with information about any potential hazardous material that is stored at the business. In our case, this means cleaning supplies. The WISHA inspector determined that we had 11 items in the restaurant that required an MSDS sheet. We found that we were missing one sheet. We had just changed soap suppliers the previous week, and a sheet from one of the new products had not arrived. The manager immediately called the soap manufacturer on their 24-hour 800 line and we requested a faxed copy of the missing sheet be sent to the restaurant. We received the fax in less than 2 minutes. The inspector explained that a copy was not acceptable, that we must have the original. We were fined $1,000.

Later, at the review hearing, I explained that all versions of MSDS sheets were copies, as no one was sitting at a table somewhere handwriting originals for every one of the millions of required MSDS sheets in the country. A review officer found out that we did not have the MSDS sheet on hand at the time of the inspection, and the $1,000 fine was not changed.

Next, we explained that in the past we had stocked a first-aid kit, but our employees would take all the Band-Aids and aspirin as soon as we put them in the kit, and we had given up on being able to keep these freely available. We did, however, keep a good supply of aspirin and Band-Aids locked in the manager's office for use when needed. We were told that having them locked in the office was a violation, and the fine for this was $1,000 for the first offense. We corrected this while the inspector was on the property. The fine was removed by the review officer.

Finally, concerning employee-conducted safety meetings, we did not know of the requirement concerning safety meetings. Of course, ignorance is no excuse, but it is the explanation for the lack of meetings. Before we went to the review hearing the crew elected a safety committee and held meetings concerning safety. This information was given to the review officer. The fine of $900 stood.

Two weeks after the review hearing we received the findings of the review officer leaving my company with a fine of $1,900. Remember, this is for a first offense, and all violations had been corrected as soon as possible, some while the inspector was still on the premises. There was no allegation that any of the violations were connected in any way to anyone's injury. Clearly, every violation was an administrative mistake. The letter reducing our fine from $4,900 to $1,900 informed us of our right to request an administrative law judge to mediate the fine. I immediately made the request for the mediation.

A few months later, the mediation hearing was held. Present were a representative from WISHA, the judge, and me. In this

hearing I explained to the judge that the inspector had fined me for violations that had not occurred. I was required to prove my innocence or pay the fine. When I proved my innocence, the fine was removed, but I had to bear the cost of the burden of proof.

Next, I explained that I was unaware of the law on the violations that proved true. We did, however, apologize for the mistake and made immediate correction. I noted that all offenses were the first time. I explained to the judge that I thought we had learned our lesson and that no purpose would be served in perpetuating the fine. I suggested that some fine would be appropriate if we had not corrected the problem or if we had been found in noncompliance in the past.

The judge asked the State representative to give her side of the issue, and she had a worksheet that she used to determine the proper fine in this case. The worksheet scored Cattin's Restaurants in five areas. No. 1 was attitude. She told us we got points for being contrite. No. 2 was a history of violations, and this is where I first found out that WISHA had inspected my restaurant in Tumwater 5 years earlier. No. 3, the size of the business. We got some help here, as we're not a large company, but we did not get the maximum points, because we're not a small company. No. 4 was the seriousness of the offense, and I believe we got some help here, because they weren't terribly serious. And No. 5, for correcting the problem, I think we got credit for that.

From this worksheet we were told that an adjustment to $1,500 would be acceptable to WISHA from $1,900. The judge asked me what I thought. I told him that my opinion had not changed, that there should be no fine this time. After that, he just looked at me for a while, then he told me if I did not want to pay the fine that I could hire a lawyer and ask for a review of the case by State Superior Court. I asked the judge if he thought removing the fines was appropriate. He stated that his opinion was irrelevant, as he had no authority to force a change in the fine. I then asked him what purpose was served by having a hearing with a judge with no authority. He explained that it was the law. I told him that it seemed to me it was a silly law that would require us to pay a judge to preside over a matter that he had no authority to change the outcome. He told me that if I didn't like the law, that I should contact my Congressman. So here I am.

From this experience, I've determined that our businesses and the general public would be well served if our Government made some small changes in the way it does business. To solve the problem of notification—this concerns the issue of my restaurant in Tumwater that I had no knowledge of the previous inspection—the Government should provide a place on all licenses for a name, phone number, and address where official correspondence must be sent. If the Government cannot prove that the notification was received by the person whose name is on the license, the Government should not be allowed to proceed. These matters are too important to leave to chance. Having a Government employee meet with any company employee, regardless of the person's authority or lack of it, is not a reliable method to achieve compliance with the law. Only our Government would try to accomplish anything in this manner. Since all failures in this area are seen as the fault of the

business, the Government agency has no motivation to change their methods. This fact tends to give the appearance to a business operator that the Government likes to operate in a "gotcha" mode.

I believe that the requirement of the Government that a business must hold safety meetings and employees must be paid for these meetings, but that the management is not allowed to run the meeting and is not allowed to select who is on the committee, is plainly wrong-headed. It clearly implies that management is not to be trusted. If this were true, then all business should be outlawed. This policy has a tendency to create a view of management of being out of control and untrustworthy in the eyes of the employees of the business. This undermines the traditional employer-employee relationship. I don't think this result is by accident.

It's my understanding that the fines that WISHA levies stay in the department. I believe this provides an improper motivation to all employees of the department. It appears to me WISHA department employees' personal income is dependent in some measure on their ability to generate revenue from fines. If they were going to have an administrative judge preside over the mediation of the allegations of the OSHA agency, the judge should have the authority to adjust the fine as he sees fit. It's important to note that I believe the administrative law judge is an employee of the WISHA agency. This is clearly a conflict of interest. A judge should be independent.

I was told that the WISHA department did not have the authority to lower the fine. They told me they had to comply with a policy given to them, including the scoring multiplier for the fine, from the Federal Government. Local people should have the authority to run the OSHA program in a reasonable manner.

I believe that violations discovered by OSHA should be written up for correction, a business should be given a reasonable number of days to correct the violation. If the necessary corrections are made, the business should not be fined. If the corrections are not made in the required time, only then should a fine be considered.

There needs to be some form of protection for a business from overzealous inspectors. An inspector should be rated on how many violations he or she writes that are sustained. If too many violations are incorrectly alleged by an inspector, the person should be required to obtain remedial education for their lack of knowledge or judgment. This should help to reduce the number of unfair allegations that must happen every day. Business operators should not be subject to the whims of an out-of-control bureaucrat.

By the way, I paid the $1,500 fine. It was cheaper than hiring a lawyer.

Mr. MCINTOSH. I've got several questions for you, but we'll come back at the end of the testimony.

Mr. Don Guthrie, who is vice-president of Wayne's Roofing Co.

Mr. GUTHRIE. Thank you, Mr. Chairman. My name is Don Guthrie, and I'm vice president of a moderate-sized roofing company in the Sumner area. I appreciate this opportunity to present comments on the need for regulatory reform on the Federal level.

In 1994, the U.S. Department of Labor Occupational Safety and Health Administration issued new rules in fall protection safety for workers in the construction industry. Almost every worksite all workers go to requires compliance with these types of regulations.

In Washington State, we've had fall protection regulations for construction workers for many years. Failure by companies in our industry to comply with these fall protection rules can and have resulted in multithousand-dollar fines, as well as potential injuries to our workers. Injuries to our workers are not only harmful to them, they are harmful to our company, to lose the services of a good employee, and worker accidents also increase our workers' compensation costs.

The newly adopted Federal rules were far different in many key areas as compared to the existing State rules for fall protection. Since Washington State is a delegated State for the administration of the Federal Occupational Safety and Health Act, Washington State had to adopt, within 6 months of the adoption of the Federal fall protection rules, State fall protection rules that were at least as stringent as the newly adopted Federal fall protection rules.

Mr. Chairman, I will try to make four key points in the few minutes I have left.

The Federal rules on fall protection were excessive. Our employees even laughed at many of the requirements as being unnecessary and impossible to comply with on the job site. The excessive nature of these rules forced our national association and others in the construction industry to file a lawsuit against the U.S. Department of Labor to try to bring some reason into these rules. It is time for Congress to require Federal agencies to only write rules that are clearly needed and to clearly demonstrate the need for the rule before it is proposed or adopted.

The rule is very ambiguous. Once our State Department of Labor and Industries tried to implement the Federal rule, they could not determine how to implement it. We small businessowners were totally lacking for what to do if the Government agencies enforcing the rule didn't know how it was to be implemented. How in the world are we supposed to comply with a rule if the enforcing agencies do not know how the rule will be applied? The ambiguity of this rule cost my industry association thousands of dollars in consulting fees to just try to get answers to key questions so that we could prepare compliance materials and train our members and their workers on how to comply and avoid fines for noncompliance.

This constant changing of the rules by the Federal Government has now left our employees confused. For example, now they are not sure what rule applies when. The Federal rule required fall protection at 6 feet, then it changed to 25 feet in some cases. Our State rule used to apply at 10 feet, but it was changed to 6 feet in October 1995 because of the Federal rule. In December 1995, it raised back to 10 feet after the Federal agency issued its directive changing the application of the Federal rule.

As I stated before, many of the workers in our industry laughed at a number of the unnecessary requirements of the Federal rule. This Federal rule on fall protection for construction workers has probably caused more confusion, lack of confidence, and harm to worker safety than it has helped in Washington State due to the constant changes, ambiguities and inapplicability.

Since our industry must comply with these rules every day, we had no option but to prepare to comply with them. This cost our business $15,000 to $20,000 alone. In addition, our State trade or-

ganization prepared compliance manuals and held training for 784 workers at a cost to our members in excess of $100,000. Five days after we had already spent all of this money, the Federal Department of Labor changed its mind and issued its directive, substantially changing how the rule would be applied. Who is going to repay my $15,000 to $20,000 in costs? Our industry spent over $100,000 for nothing. This is $120,000 less my firm and the others in our industry will have for other programs to benefit our employees. But that's not the end. We will still have to spend more money when the Federal and State governments revise and reissue these rules in the near future.

No business or industry should be required to expend moneys to comply with rules that are excessive and ambiguous. Congress needs to adopt legislation to require agencies to demonstrate that a rule is really necessary before it is even proposed, that any proposed rule imposes the least burden necessary to achieve the needed result. The paperwork costs alone for this Federal rule are extremely high, time consuming, and add little to enhance worker safety. That the rule is understandable to those who must comply with it and that the adopting agency provides voluntary compliance assistance—meaning no fines—to help those required to comply with the rule to comply voluntarily over a reasonable period of time.

Thank you for the opportunity to present my comments to the committee.

[The prepared statement of Mr. Guthrie follows:]

DON GUTHRIE, VICE PRESIDENT

WAYNE'S ROOFING, INCORPORATED

Thank you Mr. Chairman. My name is Don Guthrie and I am the vice president of a moderate size roofing company in the Sumner area. I appreciate this opportunity to present comments on the need for regulatory reform on the federal level.

On August 9, 1994, the US Department of Labor, Occupational Safety and Health Administration issued final rules on fall protection safety for workers in the construction industry (Attachment 1 - cover page) even after receiving overwhelming concerns from the construction industry about the feasibility of the new rules. Almost every worksite our workers go to require compliance with these types of regulations. In Washington State, we have had fall protection regulations for construction workers for many years (Washington Administrative Code 296-155-24501 through 24525). Failure by companies in our industry to comply with these fall protection rules can and have resulted in multi-thousand dollar fines as well as potential injuries to our workers. Injuries to our workers are not only harmful to them, they are harmful to our company to lose the services of a good employee and worker accidents also increase our worker's compensation costs.

The newly adopted federal rules were far different in many key areas as compared to the existing state rules for fall protection. Since Washington State is a delegated state for the administration of the federal Occupational Safety and Health Act, Washington State had to adopt within 6 months of the adoption of the federal fall protection rules, state fall protection rules that were at least as stringent as the newly adopted federal fall protection rules.

Mr. Chairman, I will try and make 4 key points in the few minutes I have left.

1. The federal rules on fall protection were excessive. Our employees even laughed at many of the requirements as being unnecessary and impossible to comply with on the job site. Convincing employees to comply with government regulations is difficult enough but when the regulations are so excessive so as to stimulate employee laughter, this lack of confidence in the regulations makes employee compliance almost impossible. The excessive nature of these rules forced our national association and others in the construction industry to file a law suit against the US Department of Labor to try and bring some reason into these rules. It is time for Congress to require federal agencies to only write rules that are clearly needed and to clearly demonstrate the need for the rule before it is proposed or adopted.

2. The rule is very ambiguous. Once our state Department of Labor and Industries tried to implement the federal rule, they could not determine how to implement it. We small business owners were totally lacking for what to do if the government agencies enforcing the rule didn't know how it was to be implemented. How in the world are we supposed to comply with a rule if the enforcing agencies do not know how the rule will be applied. The ambiguity of this rule cost my industry

association thousands of dollars in consulting fees to just to try and get answers to key questions so that we could prepare compliance materials and train our members and their workers on how to comply and avoid fines for non-compliance.

3. This constant changing of the rules by the federal government has now left our employees confused For example, NOW they are not sure what rule applies when. The federal rule required fall protection at 6 feet, then it changed to 25 feet in some cases Our state rule used to apply at 10 feet but it was changed to 6 feet in October 1995 because the federal rule. On December 22, 1995 it raised back to 10 feet (Attachment 2) after the federal agency issued its directive (Attachment 3 - cover page of 9 page Directorate) changing the application of the federal rule. As I stated before, many of the workers in our industry laughed at a number of the unnecessary requirements of the federal rule. This federal rule on fall protection for construction workers has probably caused more confusion, lack of confidence and harm to worker safety then it has helped in Washington State due to the constant changes, ambiguities and inapplicability. Please understand that we do appreciate the U.S Department of Labor issuing its Directorate to correct a number of excessive requirements in the area of residential construction, but it would be far better to have perfected the regulation the first time and avoid unnecessary costs, confusion, ambiguities, and a lack of confidence by workers because the original regulation was excessive.

4. Since our industry must comply with these rules everyday, we had no option but to prepare to comply with them. This cost our business $15,000 to $20,000 alone in management costs, administrative costs and wages paid our workers to be trained to comply with the new federal rule was greatly revised just 8 days prior to its application to our firms. In addition, out state trade organization prepared compliance manuals and held training for 784 workers at a cost to our members in excess of $100,000 Five days after we had already spent all of this money, the federal Department of Labor changed its mind and issued its directive substantially changing how the rule would be applied (Attachment 3 - cover page of 9 page Directorate). Who is going to repay my $15,000 to $20,000 in costs. Our industry spent over $100,000 for nothing. This is $120,000 less my firm and the others in our industry will have for other programs to benefit our employees. But that's not the end, we will still have to spend more money when the federal and state governments revise and reissue these rules in the near future. No business or industry should be required to expend moneys to comply with rules that are excessive and ambiguous. Congress needs to adopt legislation to require agencies to:

   a. Demonstrate a rule is really necessary before it is even proposed
   b. Any proposed rule imposes the least burden necessary to achieve the needed result. The paperwork costs alone for this federal rule are extremely high, time consuming and add nothing to enhance worker safety.

c. The rule is understandable to those who must comply with it

d The adopting agency provides voluntary compliance assistance - meaning no fines - to help those required to comply with the rule, to comply voluntarily over a reasonable period of time.

e. Require agencies to notify all affected parties when they change the application of a federal rule. Had it not been for my trade organization, I would never have known about the changes in the application of this federal rule. While I appreciate the reduced requirements by the U.S. Department of Labor on this issue, I believe that notification of any change in application of federal regulations should be provided to ALL affected parties within 30 days of the change being issued.

Thank you for this opportunity to present comments to the Committee and I will be pleased to answer any questions you may have.

ATTACHEMENT 1

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

RIN 1218–AA66

(Docket No. S–206)

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises the construction industry safety standards which regulate fall protection systems and procedures. These systems and procedures are intended to prevent employees from falling off, onto or through working levels and to protect employees from falling objects.

The final rule corrects problems which have arisen during enforcement of the existing standards. In this final rule, OSHA either maintains or increases the requirements for protection from those hazards, but does so using more performance-oriented criteria where possible, rather than specification-oriented language. The final rule also consolidates and simplifies many of the existing provisions. This rulemaking is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without imposing unnecessary burdens.

In addition, the final rule makes one change to a provision in the Occupational Safety and Health Standards for General Industry. In particular, § 1910.269—Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment which contains a requirement in paragraph (f)(2) that personal fall arrest equipment meet the requirements of subpart E of Part 1926. That provision has been revised to require the equipment to meet the requirements of revised subpart M of Part 1926.

EFFECTIVE DATE: This final rule becomes effective February 6, 1995.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Barbara J. Bielaski, project officer, Office of Construction and Civil Engineering Safety Standards; Jens Svenson, Office of Regulatory Analysis; Stephen Jones, Office of the Solicitor.

I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 *et seq.*) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (P.L. 91–54; August 9, 1969), significantly strengthened employee protection by requiring the promulgation of occupational safety and health standards for employees of the building trades and construction industry working on Federally-financed or Federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 FR 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (OSH Act) (84 Stat. 1590; 29 U.S.C. 851 *et seq.*), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted those Construction Standards, which had been issued under the Construction Safety Act in 29 CFR Part 1518, as OSHA standards in accordance with section 6(a) of the OSH Act (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were redesignated as Part 1926 later in 1971 (36 FR 25232, December 30, 1971).

OSHA adopted several regulations related to fall protection under section 6(a) of the OSH Act. In particular, the Agency adopted the standards which currently appear in subpart E, Personal Protective Equipment, (including § 1926.104—Safety Belts, Lifelines, and Lanyards and § 1926.105—Safety Nets) and in subpart M, Floor and Wall Openings and Stairways. Subpart M has been amended several times under section 6(b) of the OSH Act.

As part of OSHA's continuing standards evaluation program, and in response to public comments, a complete review of subpart M was begun in 1977. Since then, the Advisory Committee on Construction Safety and Health (ACCSH) has reviewed draft revisions of subpart M a number of times and has made many suggestions regarding the draft regulatory language. The transcripts of the ACCSH meetings where draft revisions to subpart M were discussed are part of the public record (Exhibit 1). The ACCSH recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the revised standard reflect the suggestions of the ACCSH and other interested persons. Specific ACCSH recommendations are discussed in the appropriate sections of the Summary and Explanation, below. Committee discussions that either were inconclusive or did not produce a specific recommendation have also been considered, but are not discussed in this preamble.

On November 25, 1986, OSHA proposed to revise virtually all of the fall protection provisions of the construction industry standards and to consolidate those requirements, except where specifically provided otherwise, in subpart M (51 FR 42718). The proposal set a period, ending February 23, 1987, during which interested parties could submit written comments and request a hearing. The Agency twice granted commenters' requests for more time to submit comments and hearing requests, OSHA first extended the comment and hearing request period to June 1, 1987 (52 FR 5790, February 26, 1987) and then extended that period to August 14, 1987 (52 FR 20616, June 2, 1987). The Agency received 162 comments on the proposal and several requests for a hearing.

On January 26, 1988, OSHA announced that it would convene an informal public hearing beginning on March 22, 1988, to elicit additional information on specific issues related to fall protection, scaffolds and stairways and ladders (53 FR 2048). The hearing notice also reopened the comment period regarding proposed subpart M until March 8, 1988, for the limited purpose of obtaining additional information on appropriate fall protection coverage for employees engaged in steel erection activities. The Agency noted that the information obtained would be used in development

ATTACHEMENT 2

WISHA Interim Interpretative Memorandum
Washington Department of Labor and Industries
#95-12-B
ENFORCEMENT OF SIX-FOOT FALL PROTECTION

Approved: Frank P. Leuck, Assistant Director
Consultation & Compliance Services Division

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Background

Since 1986, the Department of Labor and Industries (L&I) has required fall protection under the Washington Industrial Safety & Health Act (WISHA) using a four-foot "trigger height" for guardrail situations and a 10-foot trigger height for general fall protection in construction. Since 1991, enforcement of these requirements has depended upon a standard developed by the state with strong cooperation from both labor and management within the construction industry. Last spring, L&I followed the lead of the federal Occupational Safety & Health Administration (OSHA) in adopting a revised fall protection standard, with a six-foot trigger height. That standard took effect on October 1, 1995.

Because of concerns over the lack of understanding of the new requirement in the construction industry, L&I adopted an educational strategy that delayed actual enforcement of the new requirements of the standard -- particularly the six-foot trigger height -- until January 1, 1996. Until that time, WISHA compliance officers were directed to cite only those violations that would have been cited under the 1991 standard, while simply messaging those items that would constitute violations only under the new standard.

During the intervening months, L&I has continued its efforts to educate employers as to the new requirements. At the same time, however, the actual application of the federal standard has become somewhat less certain, and discussions continue within both OSHA and the Congress regarding the standard and whether it will be revisited. Rather than achieving the expected clarity with regard to the federal and state standards, discussions during recent months have contributed to uncertainty about the standard and what they future may hold. They have also led L&I to consider possible modifications to its own standard.

For these reasons, the following interim policy will apply until such time as a new standard can be developed or clear guidance can be provided regarding the future application of the 1995 WISHA standard.

Policy

Enforcement of the construction fall protection standard shall continue to apply *only* to those items that would have represented violations under the 1991 standard. Such items shall be cited appropriately *under the new standard*. Violations of the new standard that would not have represented violations of the previous standard shall be neither cited nor messaged, although they should be pointed out where possible during either the walk-around or the closing conference.

ATTACHEMENT 3

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OSHA Instruction STD 3.1

DEC 8 1995
Directorate of Construction

Subject: Interim Fall Protection Compliance Guidelines for Residential Construction.

A. Purpose. OSHA has decided to undertake further rulemaking regarding the fall protection standards for construction, 29 C.F.R. Part 1926, Subpart M, and is moving expeditiously toward the publication of a Notice of Proposed Rulemaking (NPRM). This proceeding will address concerns raised by OSHA compliance personnel and by representatives of the residential construction industry. This instruction addresses the interim fall protection measures that will be acceptable for compliance with §1926,501(b)(13), residential construction, during the rulemaking period.

Subpart M does not define "residential construction." For the purposes of interim compliance guidance under this directive, the term "residential construction" applies to structures where the working environment, and the construction materials, methods, and procedures employed are essentially the same as those used for typical house (single-family dwelling) and townhouse construction. Discrete parts of a large commercial structure may come within the scope of this directive (for example, a shingled entranceway to a mall), but such coverage does not mean that the entire structure thereby comes within the terms of this directive.

This directive applies only to construction activities and does not affect any general industry activities, such as but not limited to tree trimming, that take place at residential sites.

The procedures contained in this instruction will remain in effect until further notice or until completion of a new formal rulemaking effort addressing these concerns, whichever is earlier.

Mr. MCINTOSH. Thank you, Mr. Guthrie. I appreciate it.

Our third witness on this panel is Mr. David Cornforth. Mr. Cornforth.

Mr. CORNFORTH. Thank you, Mr. Chairman and Congressman Tate, for inviting me here today to testify before your subcommittee. I appreciate the opportunity to share my experience and thoughts on overzealous Federal regulation with you.

I own a car dealership in Puyallup and have worked in the automobile business for most of my life. I started out painting fences at the dealership for my father when I was a young man. My dealership has provided part-time and summer jobs for teenagers in Puyallup for many years. Typically, I hire high school students with valid Washington State driver's licenses to work after school and on Saturdays as lot attendants.

A lot attendant's duties include washing cars, moving cars from lot to lot, filling cars with gasoline, cleaning the shop and other odd jobs. A lot attendant at my dealership earns $5.50 an hour, well above the minimum wage. Prior to March 1994, I usually employed two teenagers as lot attendants.

These jobs provide teenagers with an opportunity to earn money and gain valuable experience in the automobile industry. Several of my long-term employees started out working after school and over the summer as lot attendants when they were in high school. They have now moved up through the ranks and have chosen well-paying careers in the car business. Many auto dealers themselves were first exposed to the industry when they were hired for these sorts of after-school positions.

One of my employees, Dale Montague, has been with my dealership for 18 years. He started working as a lot attendant after school when he was a teenager. He then worked full time in our shop while attending vocational school at night. Today, Dale is a journeyman technician in a career position. His job allows him to provide for his family and he owns his own home. Dale is the perfect example of how an after-school job as a lot attendant can turn into a career position.

You would think, Mr. Chairman, that all Americans would appreciate the importance of a teenager's first job. Summer and part-time jobs provide many teens with their first experience in the real world of hard work and teach them the value of a dollar. Lot attendants are certainly exposed to more of what goes on in the world than their friends who work flipping burgers at fast food restaurants. However, the U.S. Department of Labor doesn't see it that way.

In early 1994, the Department's local office began auditing auto dealers throughout the region by mail, asking them how many teenagers they had employed over the previous 3 years, whether these teens had valid State driver's licenses, and what the dealerships' annual dollar sales volume had been during that period.

Then, the Department of Labor called the teens at home and interrogated them about their jobs at local car lots. You can imagine how intimidated a young person would be by a call from the U.S. Department of Labor. The teenagers told them that they had run errands from time to time, taken cars up the block to the local gas station, and that sort of thing.

Under an extreme interpretation of Hazardous Occupation Order No. 2, the Department of Labor determined that my company and 50 other dealerships in the area had violated the Fair Labor Standards Act. The regulation in question states that minors may drive on public roads only incidentally and occasionally on the job. This law has been on the books since 1938. I and most other car dealers who employed minors as lot attendants believed we were abiding by the law. Driving is not an integral part of a lot attendant's job, but they do move cars occasionally, sometimes on public roads.

Without notice, in 1994, the region 9 office of the Department of Labor determined that Hazardous Occupation Order No. 2 meant that minors can only drive on public roads in an emergency or once or twice a year. This is an overzealous and extreme interpretation of the law.

Instead of handling the situation in a rational manner by informing local dealers of this new interpretation, Department of Labor officials chose to punish us as an example to other employers. Overall, the Department of Labor issued fines totaling $200,000 to 51 car dealerships in the Seattle area. My business was fined $4,000. With me today is Keith Shea, a current employee who lost his job at another dealership a few years ago when this occurred.

Mr. Chairman, these overzealous Federal regulators have not saved any 16- or 17-year-olds from dangerous situations. They have destroyed opportunities for them. Instead of good-paying jobs that will start them off on a career path, these teenagers now have to work at fast food restaurants earning the minimum wage. That's the tragedy.

My business will survive. I've spread the lot attendants' functions among other employees. It's the teenagers that suffer.

It seems odd to me that a Federal agency dedicated to working Americans would work actively to destroy opportunities for young men and women. Believe me, I am not an advocate of placing minors in a dangerous working environment. The teens employed on my lot were safer at work than they were going out with their friends on Saturday night.

If the Washington State Department of Motor Vehicles issued driver's licenses to these young people, I do not believe I was placing them in any danger by asking them to drive a block or two to the gas station. I'm not aware of a single incident at my dealership, or any dealership in the region, where a minor was injured while driving on the job.

I might add that these fines were only issued in Washington State and only in the automobile industry. The Department of Labor did not investigate dealers in any other State and they did not investigate other businesses in this State for this type of violation. It is clear to me that the officials in the regional office of the Department of Labor did not fine our business in the interest of safety, they did it to make a name for themselves as hard-nosed Federal regulators.

Thank you for allowing me to share this horror story with your subcommittee, and I hope my story will help you in your efforts to reform our regulatory system.

Mr. MCINTOSH. Thank you, I appreciate it. I appreciate all three of you coming here today and talking about examples in your businesses.

I've got a couple of different questions, and I imagine Randy does as well.

Mr. Cattin, have you had any serious accidents at any of your restaurants, and was that one of the criteria that was used when they went through and looked at deciding how much of a fine?

Mr. CATTIN. Well, there have been a few accidents in the 14 years that I've been in business, certainly, a broken ankle, things like that. But this inspection and the fines, the finding of violations, to my knowledge, have no connection to any injury. And certainly none of the injuries that have happened in our restaurant, we believe, are associated with an MSDS sheet, having our back door locked, or not having a safety committee or not having a band-aid or an aspirin in the restaurant.

Mr. MCINTOSH. And you indicated in your testimony you took steps to try to correct the violations that they had cited.

Mr. CATTIN. Certainly, immediately. We got a safety committee together later that afternoon, we fixed our first aid kit while the inspector was still inspecting us, and we had the MSDS sheet within 2 minutes of the time we discovered that we didn't have it. So the corrections were made immediately.

Mr. MCINTOSH. And the other incidents that weren't related to the inspection, did you also take similar steps?

Mr. CATTIN. Well, it was our position that we weren't required to leave our back door unlocked.

Mr. MCINTOSH. No, I'm sorry. When you mentioned that somebody broke an ankle, what is your general attitude toward safety and what do you do to try to prevent those types of accidents?

Mr. CATTIN. Well, we talk about it, we keep the facility clean, and we supervise the activities in the restaurant, making sure that people work in a safe manner. Usually, it's just a matter of habits, and a small discussion with the individual can relieve that problem.

Mr. MCINTOSH. I don't mean for you to point out, necessarily, specific examples, but are there known people in your business, in the restaurant business, who do have safety problems?

Mr. CATTIN. Yes, I wouldn't have thought that until a couple of years ago, when I watched one gal that had filed eight Labor and Industry claims with us, two of which were denied. My understanding is the only reason that a Labor and Industries medical claim would be denied is if it didn't happen. Otherwise, it would have been paid. But she had two claims that were denied. But I was in the restaurant one day working, and this gal was there, and she tripped three times in the period of time that I was there, bumping into a door and tripping over a broom, and so this person seemed to have a little more problem with tripping, and she had had a couple injuries from that.

Mr. MCINTOSH. Is there any way in which you can contact WISHA on your own and say, "I'd like you to come in and look and see what we can do to improve safety"?

Mr. CATTIN. There probably is, but I sure wouldn't want to do it. I would think they'd come in and find something wrong and fine me.

Mr. MCINTOSH. So you'd be afraid of the fine, so you wouldn't reach out to try to improve your safety in your restaurants for fear of a fine.

Mr. CATTIN. Not with what I know. Not from them. I mean, we do that on our own, and we hired an independent company to help us in that area and work with us, but not the State, no.

Mr. MCINTOSH. Thank you.

Mr. Guthrie, you had mentioned the fall protection standards, and we've heard a lot about that in some of the other hearings as well, and the complaint often seems to be that they're unrelated to actual safety. You mentioned the employees kind of laughed at the requirements when it was explained to them. What steps do you and your employees take to prevent or minimize the danger of falling while working above the ground?

Mr. GUTHRIE. Well, let me just retract a minute and suggest that the State of Washington, through its program, for the past decade has exceeded the Federal standards by close to 40 percent. They've maintained a 10-foot fall protection rule, whereas the Federal Government has, up until recently, had a 16-foot fall protection rule.

In all instances where we have the exposure to fall hazards for our employees, there is a variety of ways that we have available to us to mitigate those fall hazards. Guard rails are one option, there are monitoring systems where we have a flagged warning line and monitoring observation of the employees, there are harnesses and such, lanyards, tie-off points that are utilized. And there's also an awareness program that, prior to starting any project that involves a fall hazard that exceeds the requirement, we are obligated to fill out what's called a fall protection work plan that makes our employees and ourselves aware of the hazards that we're entering into, documents them, and hopefully advises the employees of appropriate ways to mitigate those hazards.

Mr. MCINTOSH. Do you notice across the industry, looking at different people involved in construction, that some companies have a better attitude or better approach toward it than others?

Mr. GUTHRIE. Certainly. There is a whole variety of people in business today, some more conservative, some more aggressive. I think those of us who have a vested interest in safety are those who are hurt most by these regulations in our pursuit to comply with regulation to promote a safe work environment. And basically, I would applaud the State Association of Working Contractors, as well as the local or State Labor and Industries Department for their work in the fall protection area. We have a pretty proactive group of people who, I think, do a pretty good job in this area. The problem we encounter is when we have the interference of the Federal Government in promoting their idea of safety or fall protection. As I've said, we've exceeded the Government limits for nearly a decade, and I think we should go on our track record in our State.

Mr. MCINTOSH. Does WISHA have a way of sorting out those companies that are better attuned toward the safety precautions than those who aren't?

Mr. GUTHRIE. Well, it would be my opinion that WISHA would have a general understanding of those companies that are active in the association that are part of our fall protection program and part of our fall protection training criteria that we've developed, as I mentioned in my testimony. I think possibly through their compliance or enforcement officers, prior violations and such that they hold in record in their main computer is their main evidence of who is, quote, unsafe or safe.

Also, in the State, we are experience rated, meaning that the more injuries we have, the higher our experience rating. So I have to believe that just by evidence of a company's experience rating, if they were less than the base rate, they would be evidenced to be more safe than the usual; and higher, less safe.

Mr. MCINTOSH. And does the regulatory process tend to focus its energy on those that are less safe?

Mr. GUTHRIE. The regulatory process tends to enhance everyone, and whether they are more safe or less safe, the advantage is, obviously, the people who are more safe, are promoting a good working environment and complying with the rules are normally left without violations and maybe comments or maybe an "atta boy." The people who are less inclined to comply with safety can receive violations. They can have the worst injuries occur as well. Worker safety is not an issue on their projects.

Mr. MCINTOSH. So would you say that generally the system is well set up?

Mr. GUTHRIE. I would say in the State of Washington the system is pretty well established and has functioned quite well. And I think the track record of worker injury in the past 10 years since we went to a lesser fall protection ruling is probably evidence of that.

As I say, I think where the interference comes along is the State is mandated to adopt Federal policy within 6 months whether that policy is right, wrong, or indifferent. And I think in this case it's excessive, and employees recognize that. And of course, if they don't believe in something, it's going to be difficult for an employer to be in full compliance on those issues.

Mr. MCINTOSH. Thank you.

Mr. Cornforth, thank you for coming. Keith, I wanted to ask you if you had anything you wanted to say or put on the record about your experience. I think you ought to speak into the microphone right there.

Mr. SHEA. I'd just like to say that it's unfair for kids to not get the chance that the people had before them to work up to the dealerships or in any jobs. You learn as you're working.

Mr. MCINTOSH. So you think this new rule actually ends up just penalizing the high school students who would have those job opportunities and now they don't.

Mr. SHEA. Yes.

Mr. MCINTOSH. Thank you for coming today. I appreciate that.

Randy, do you have any questions for the panel?

Mr. TATE. Sure. I'd like to thank all the panelists again. You've done a great job and I appreciate your taking time out of your busy schedules to come here, and Keith, as well.

Keith, a couple of questions. I didn't catch it, but were you called at home by the Labor Department?

Mr. SHEA. I was working at Tacoma Dodge at the time, and they called me when I was working there.

Mr. TATE. They called you at home?

Mr. SHEA. No, at work.

Mr. TATE. Oh, at work. What did they ask you?

Mr. SHEA. I wasn't sure who they were, at first.

Mr. TATE. Did they identify themselves?

Mr. SHEA. I think so, yes. But they just started asking me if I drove off the lot and how many times and if I drove at night or anything.

Mr. TATE. How soon after that call did you lose your job?

Mr. SHEA. Well, they waited a while to let me go, until I called in sick one day. Then, the next day I came in, he told me that they had to let me go. And they gave me a piece of paper, which I don't have, but it said that I was unable to drive vehicles off the lot and I didn't show up one day, I called in sick, so they said that was the reason.

Mr. TATE. How often did you drive on a public road?

Mr. SHEA. When I was at Tacoma Dodge, maybe just a couple times just up the road to the gas station. But down at Cornforth-Campbell, I hardly ever did.

Mr. TATE. Thank you, Keith, for your comments. I appreciate your taking time out of your schedule.

Mr. Cornforth, you mentioned Dale Montague in your testimony, who has worked at your dealership for 18 years. I was taking notes as you were talking. How many Dale Montagues would you guess would be lost in the future who didn't get that chance to kind of get their foot in the door?

Mr. CORNFORTH. Out of 41 employees, I have three that started out as lot boys and have never worked anywhere else. Keith's father is a department manager, and I have a painter in the body shop, and the technician I mentioned earlier.

Mr. TATE. You said that all of a sudden dealerships throughout the Puget Sound region got calls in 1994, I guess. Did they ever explain why they began this audit? You mentioned it was only in Washington State.

Mr. CORNFORTH. Right. It was never explained; it was just a paper audit that came in the mail.

Mr. TATE. Had you ever seen anything like that before?

Mr. CORNFORTH. No; and of course, our State association tries to keep us up to speed on rules of this type, and they were flabbergasted as well.

Mr. TATE. So you never had any kind of warning. What about if the law was changed and went back to what you currently understood it for years, or however long you've run that particular dealership? Would you go back to hiring Keith and others like him?

Mr. CORNFORTH. Yes; we would. It is kind of a supplementary position. We can spread those duties among other people, but it's helpful to have an extra set of hands come in in the afternoon in a shop operation, and it gives these kids the opportunity to work their way up, and it helps us to find good people.

Mr. TATE. I know it wouldn't apply just to auto dealerships, our focus today, but it could be you work for your father's business or whatever and needed to go down to the bank for your dad to get some more cash for the cash machine in your grocery store, or if you run a floral shop and it was around Mother's Day when business picks up and you might be asked to go run down the street to deliver some flowers. It could be a whole laundry list of different kinds of businesses outside of auto dealerships and workers that could be affected. How would you define incidental and occasional?

Mr. CORNFORTH. I think as long as you're not hiring a minor as a driver.

Mr. TATE. As their primary——

Mr. CORNFORTH. Primary function. They're not coming in after school to literally go do deliveries. I think as long as their driving duties are no more than what they would probably do if they had the afternoon off, that you're not creating a problem.

Mr. TATE. And through all this, they never explained the rationale why someone like Keith or others would pose some kind of danger.

Mr. CORNFORTH. The only rationale that was suggested was that there would be a potential for an individual to be hurt while driving on the job.

Mr. TATE. Even though, as you stated, they have a driver's license and they'd be fully insured by your company.

Mr. CORNFORTH. Right. And they could just as easily get in an accident some other time.

Mr. TATE. All right; thank you. Thank you.

A couple of quick questions, Mr. Chairman, if I may? I'll make these as fast as I can.

Mr. Guthrie, as I understand it, about 70 percent of all OSHA violations specifically are paperwork violations. Is that what you find at Wayne's Roofing? I mean, not that you've been fined for paperwork, but I'm saying that you find that most of the effort has been on paperwork.

Mr. GUTHRIE. Quite often with our firm and through the record of the OSHA offices, the primary violations occur with MSDS type criteria that Mr. Cattin referred to, failure to have a written accident prevention program on the job site in your possession—I'd say a 70-percent guesstimate in terms of those types of citations.

Mr. TATE. If the amount of paperwork was reduced, how would that affect your particular business, especially in your area? Would it create more jobs or are you adding jobs just to comply with this paper?

Mr. GUTHRIE. Well, it's almost a position itself to maintain the compliance necessary for compliance with MSDS criteria and the written fall protection rules and to keep up with the regulations as they are constantly changing. It's a real stifler for small business. We cannot afford the luxury of adding staff to support these sorts of activities. We're a seasonal type of operation, being in roofing and construction.

Mr. TATE. Especially in this part of the country.

Mr. GUTHRIE. Exactly. We can't support overhead for the whole year, so it's quite a burden. I think that those regulations could be

streamlined, still be effective, but be much less burdensome on small business.

Mr. TATE. Sure. I appreciate your earlier answers to the chairman's question regarding safety. You should be commended for your efforts to try to ensure that your workplace and ensure that all workers are safe.

Mr. Cattin, how many people do you employ?

Mr. CATTIN. Approximately 260.

Mr. TATE. Two hundred and sixty. I know the restaurant business is very competitive. In fact, I don't know if this is true, but it's been said many times those are the businesses most likely to go out of business. There is a high turnover in the restaurant business. It's a tough business to compete. If we were able to reduce paperwork—not reduce the amount of safety because I don't think anybody wants to go back on making sure that the workplace is safe as possible for everybody, the public, the environment, workers—if we reduced it by 25 percent, would that affect the number of people that you employ? Would you employ more people at Cattin's restaurant? All that money that you do spend on compliance and/or paperwork, how would that be redirected, if there was a reduction? Just in general. I know you can't give an exact figure on the 25 percent, but I'd be curious in how it would affect hiring decisions.

Mr. CATTIN. I don't think in our case, in our industry, paperwork really is a big issue. The issue for us has been, in this particular incident that I talked about, the punitive approach that's being taken and all the time that was spent in perpetuating a fine after the fact when we had corrected the violations. There was a lot of time spent. My time is already paid for, but we're paying for a lot of Government employees to participate in perpetuating a system to continue to issue these fines.

But the paperwork issue, like the MSDS sheets, they're very simple to have. Once you have them, you're set. And so, I don't think that in our particular industry that our paperwork is burdensome. I think that the method of enforcement is burdensome.

Mr. TATE. So a system that focused in on compliance, doesn't reduce any fine over the amount the fines could be levied. But there was more of a focus on compliance than cooperation in advance—this also was mentioned by Mr. Guthrie—working together on something like this. And we talked to Mr. Cornforth. Auto dealerships could have been brought in and explained, "These are some of our concerns. What are your suggestions? Have there been problems out there?" I guess it comes back to bringing everybody to the table.

I appreciate all of your testimony, very helpful, and especially Keith for coming in. Yours was especially insightful because you were directly affected adversely by this.

Mr. Chairman, I yield back.

Mr. MCINTOSH. Thank you. I've got one more question for Mr. Cattin. You mentioned that one of the things you were fined $1,000 for was the material safety data sheets, that 1 of the 11 wasn't correct, and it was for soap. Can you tell me a little bit more about the soap that was involved? These are hazardous materials that

you have to have a data sheet on, if I understand the program correctly.

Mr. CATTIN. The particular one that we didn't have was on hand soap for use in the restrooms. It was like the soap you use in your home. My understanding is that something that would be normal household use, if it exists in the business, we're required to have an MSDS sheet. For example, if we had a lawnmower and we stored a can of gas outside, we'd be required to have an MSDS sheet for the can of gas.

Mr. MCINTOSH. So because you provide hand washing soap in the restrooms, you have to keep this MSDS on file. What does the MSDS do?

Mr. CATTIN. It describes the chemical makeup of the product.

Mr. MCINTOSH. What kind of soap was this, by the way? Can you remember?

Mr. CATTIN. It was just Echo Lab brand hand soap. Pink. And it also describes if you decide to eat a bunch of it, it tells you what the medical procedure would be to induce vomiting.

Mr. MCINTOSH. And it's a couple pages long?

Mr. CATTIN. It's a single page. Some of them are pretty amazing. We had a towel that we use, a bar towel that you use to wipe the counter tops with, and Johnson & Johnson manufactures the towel, and it's used for just wiping counter tops. But it's impregnated with a disinfectant chemical, so you're required to have an MSDS sheet for this towel. And it's a real simple one. It says the appearance is a dry towel, the appearance of the chemical, and it explains what you do if you eat the towel. It's just required that you have that.

Mr. MCINTOSH. And in your case, because you didn't have one for the soap, you ended up paying a $1,000 fine. Isn't the theory of this that the employee needs to be warned about hazardous substances in the workplace? That's my understanding of why these MSDS's were created. Do your employees regularly go and ask to look at the one about the hand soap?

Mr. CATTIN. Well, no. We have a book in a rack on the wall now that all these things are permanently stored in. And I think generally the concept behind the MSDS sheet is a valid one. Some of the things get to be a little bit comical and they appear to be extreme, such as the towel, but I can understand why it needs to be brought into that. It's just there needs to be some common sense in the application of fines and in compliance.

Mr. MCINTOSH. You'd want to notify people if you had a hazardous chemical in a manufacturing process, or something, that you'd want the employees to know about the hazard and how to treat it if something goes wrong, what the risks are and what the exposure is. But when you start applying it to hand soap——

Mr. CATTIN. The most hazardous chemical we keep on hand would be bleach.

Mr. MCINTOSH. Similar to household bleach?

Mr. CATTIN. Exactly like household bleach.

Mr. MCINTOSH. Thank you. I appreciate that. It's been an area that has been baffling me for a while.

I have no further questions for this panel. I thank all of you for coming. Keith, I thank you for joining us and coming forward. I appreciate that very, very much.

Our next part of the hearing is what we refer to as the open microphone portion. And they're going to rearrange the room here and set up a microphone for people to participate in that. Eight people had signed up in advance to participate in that, and if I could ask those individuals to come forward to the front of the room right here and then we can hear one after the other. I will ask each of you to speak for about 5 minutes, if you could.

First is Mr. Jack Gilchrist, second is Mr. Chuck Bailey—I guess we now have nine—the third is Mr. Robert Dilger, the fourth one is Ms. Sharon Waller, the fifth is Mr. John Jovanovich, sixth is Mr. Wayne Thueringer, seventh is Ms. Judi Moody, eighth is Mr. Gary Smith, and ninth is Mr. Lloyd Gardner. If you all could come up here and go ahead and form a line along the wall there, we'll just have each of you come up and talk. If I could ask each of you to please rise at the same time and raise your right hand.

[Witnesses sworn.]

Mr. MCINTOSH. Thank you. Please let the record show that each of the witnesses answered in the affirmative.

Mr. Gilchrist, welcome today. Thank you.

STATEMENTS OF JACK GILCHRIST, EXECUTIVE SECRETARY, SEATTLE AND KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL; CHUCK BAILEY, DIRECTOR OF EDUCATION AND SAFETY, WASHINGTON STATE LABOR COUNCIL; ROBERT DILGER; SHARON WALLER, SMALL BUSINESS OWNER; JOHN JOVANOVICH, OWNER, JOVANOVICH SUPPLY CO.; WAYNE THUERINGER; JUDI MOODY; GARY SMITH, EXECUTIVE DIRECTOR, INDEPENDENT BUSINESS ASSOCIATION; LLOYD GARDNER; BONNIE PAGNUM; CURT ANDERSON; AND MIKE KELLY, VICE PRESIDENT, ASKO PROCESSING

Mr. GILCHRIST. Thank you. My name is Jack Gilchrist. I'm the executive secretary of the Seattle and King County Building and Construction Trades Council. I represent 25 local unions, 3 councils, and approximately 12,089 workers.

We're very, very concerned about what we feel is regulation bashing. You may be aware of the fact that in this State we had a task force put together by the Governor which included just about everybody you could think of in order to try to come up with some conclusions about regulation reform. Certainly, regulation reform needs to be done in all areas. However, when the task force came forward with their recommendations and it was worked up into a bill in the State, it ended up with everything being attached to it until even the people who put the thing together couldn't stand it, and they turned it down.

Primarily what I'm seeing here today is a lot of anecdotes, but it doesn't necessarily mean that regulations are not good for the common people, the working people, and the consumers.

I'm concerned that on H.R. 2019, Senate bill 1035 coupled with tort reform would leave consumers in a very bad position. There would be no protection from an unscrupulous company that put forward something that might be considered a medication that was,

in fact, injurious to your health, and certainly ill-informed patients could be harmed by some treatments and could not even be compensated. I noticed that the doctor said that he spent $250,000 trying to mitigate his circumstances, and that would be all that tort return would allow. So I assume that would pay for the attorney, but the litigator or the person who needed the help wouldn't get any. That seems to be somewhat unfair for the consumer.

Doing away with, or severely restricting, agencies like the FDA, OSHA, WISHA, NLRB, and HUD, or cutting funding to prevent these agencies from protecting consumers and workers in favor of making it easier for companies, corporations, and wealthy entrepreneurs to do their business and become even wealthier appears to me, at least, to be ridiculous. We have these regulations because they're necessary. If they have in some means or fashion gotten out of line, as some of these anecdotes may indeed show to be possible, there are certain situations that need to be dealt with. But let's not do away with the ability to deal with these problems. Regulation reform should always keep the working people of the United States firmly in mind, not business alone.

Cost-benefit analysis appears to me to be whether or not the people affected are as important as the cost to the company to find out whether those people will be affected. That doesn't make sense to me. If a person dies because not enough money was spent in order to find out whether using a product would kill them, then the cost-benefit analysis doesn't make sense. Let's face it, if the person dies, no matter how much money was spent, it won't make any difference. That person is no longer with us. So in using cost-benefit analysis strictly to determine whether or not there's a benefit to a regulation, I would very carefully look at that, were I a Congressman.

I'm also a little concerned that we're kind of doing a one-shoe-fits-all situation here. Let's face it. The roofing contractor talked about fall protection, as well he should. It's primarily what he needs to be aware of. WISHA does a very, very good job here about that. If you cut OSHA, you cut WISHA. It's automatic. It's the way it works. WISHA follows OSHA. So if you cut OSHA out, or fund it to the point where it can't do anything for the working people of this country, you automatically cut WISHA's ability to do a good job. And you've heard, by the employers, that WISHA does a good job here.

I would ask that you think in terms of what you can do for the workers when you talk about regulatory reform, because working people get killed on a regular basis at the workplace. They get maimed on a regular basis at the workplace because people don't follow these things, and if you don't have people going out making them follow these rules, you will not have compliance. More people will be killed and more people will be hurt.

In my industry, that is really dangerous. We have a lot of people who get killed and injured on the job site by people who do not follow regulations, and we need that compliance to happen. It's very, very important. If you've ever had to go tell a woman or a family that their spouse was killed on the job site because the company didn't follow the rules, until you've gone through that experience,

you just can't know what it feels like. And to be on the receiving end of that must be much, much worse.

Mr. MCINTOSH. Jack, thank you for coming. And I agree with a lot of what you said, actually, because I think the perspective is exactly right. We've got to look at how these regulations affect people in their jobs and in their work.

I had a couple questions for you. Senator Anderson articulated kind of the bottom-line goals for the Governor's task force. And frankly, I think the way she said it was very good: how were we going to get to a clean environment and a safe workplace and a healthier public place to live and, yet, at the same time, be mindful that we don't have redtape and costs that could be avoided in getting to that. I know how these things get Christmas treed in the legislative process, so the bill may not have worked out well. But do you like those bottom-line goals? Do you think that's what we should be doing as we're looking at these different regulatory programs?

Mr. GILCHRIST. When Governor Lowry set that up, he had in mind that we should reform the regulations in order to make it possible for, in fact, people to be able to get a permit to build a building in the shortest possible amount of time. That's just one instance that I'm very well aware of. What he did was set up the task force, and the task force went all the way around the State, talking to people about what they would like to see in reg reform. Then that task force formulated the bill that would, in fact, help that happen. As you say, it was then Christmas treed out of sight. But indeed, the regulatory reform, as presented in the original bill, I do not believe that anyone in this group, at least, was against he bill itself. We were all supportive of the bill. We wanted the bill to pass, and we felt like we could get rid of some unnecessary regulations and change some regulations to be more mainstream. But unfortunately, as I say, too many other things got attached to the bill that would be injurious to what was attempted in the bill itself. So it ended up with nobody satisfied with it, and they deep-sixed it.

Mr. MCINTOSH. Yes; and that's the worst part of legislation. Sometimes you see it working well, but when things like that happen, nobody wins.

Let me ask you another question, and then I think Randy has a couple. If we could work with OSHA and WISHA to redirect priorities, because some of the complaints we heard today are typical of what we hear from a lot of business. They feel they're punished for the paperwork violations and also, they don't have anybody on their side saying, "Well, here's how you can actually make your workplace safer, if you do these things." We've been looking at some reforms that don't get rid of OSHA and, in fact, in some ways strengthen it, but say we want you to, one, target the people who either have a bad safety record or ignore what you're telling them. You can kind of end up going into a business site and seeing whether the employees and the employer have a good attitude toward safety or not. I've gone through a lot of plant tours and spots, and you can pick up the attitude there. Target those that don't have a good safety attitude and are creating situations that would be harmful to employees.

The second reform that we're looking at is to say why don't we have a system where you come in and you inspect, but you don't give fines on it the first time, but if they ignore the recommendations for how to improve the safety, then, you come in and you really clobber them because they're obviously disregarding the advice on how to make a safer workplace. Do you like those types of reforms that might help us reduce the complaints from people who are genuinely trying to have a safe workplace and target it toward maybe even getting a better result?

Mr. GILCHRIST. In a reform of that type, it would be OK if we had the finances and the wherewithal to get people out to inspect those places over and over again, but we do not. As a matter of fact, they may never see an OSHA inspector again because there are too many places to go, too many worksites to visit, and not nearly enough OSHA inspectors to go around. So I don't believe that you can just blatantly say, "Hey, we're going to reform this," unless we're going to make an absolute commitment with OSHA to put enough money into it to make sure that we get people out there.

We need two things. If you want to know the truth, we need more money in OSHA to do two things. One is to get those people out in front of businesses to say these are the types of things that you should be looking for in your industry in order to be safe. We also need compliance people who are able to visit jobsites on a regular basis and say to them, "Look, you can't have the back door locked. The possibility of a fire here is just enormous. So you can't have that. You've got the door locked. We're going to fine you big time for this, rather than have a lot of people get killed." So it's not just a one-prong approach, it's always a two-prong approach, and it's always how do we make it better for the working people. That should be the underlying, "What are we doing here?"

Mr. MCINTOSH. I agree with you on that goal, how do we maximize the safety on that. Thank you.

Randy, do you have any questions?

Mr. TATE. Jack, first of all, thank you for taking the time to come out. I appreciate it, and your testimony.

On a couple of points, I do appreciate your comments regarding having to go out and tell some family that their father or their mother has been killed on the worksite or been injured. I can remember in the 1970's getting a call regarding my father when he fell 28 feet on the jobsite and was in the hospital for several weeks. It's a scary thought as a little boy. And the last thing that I want is for anybody to get hurt out on a jobsite, having seen that from the receiving end of getting that kind of phone call. It's a scary thing, and I agree with you, and I don't think that anything that we want to do is to put anybody at risk, whether it would have been my father or anybody in the future.

But what we're trying to get to is some way to get out the problems where they become redundant or counterproductive, and I'd be interested in your ideas regarding cost-benefit analysis. You mentioned earlier you don't like that approach. Is there a way that we could develop a cost-benefit analysis that would take into consideration your concerns regarding the workers as primary and trying to get at some kind of reasonable, responsible cost-benefit anal-

ysis? Is there a way, or is there no way? Is there a middle ground that we can find to try to come up with a real cost-benefit analysis approach that protects workers and ensures that it meets the goals that we intended for it?

Mr. GILCHRIST. The cost-benefit analysis, as I understand it, is where the companies prove to the agency that, in fact, the product that they have out there or the procedure that they do is not injurious to the consumer, and that we have an agency that looks into that particular asset, or it's not an asset—it depends on how you look at it. To me, if you say, well, you're only required to spend this amount of money in order to prove beyond a shadow of a doubt that your product is not going to be injurious to the consumer, then I think you put a limitation on the ability to analyze whether or not in fact that product is good for you. So the cost-benefit analysis, do you have to bankrupt the company in order to get it done? I don't think so. I think that you could come up with some regulations that allowed a thorough investigation of a product and still will not bankrupt the company. By the same token, though, I don't want a company saying to Congress, "Look, we only want to spend a couple hundred dollars looking at this and then move on down the road here," and have somebody killed or maimed by that product, and then, on top of that, be unable to retrieve the money it cost them to either get well, or the amount of money the decedent's family would have to live on would only be whatever is left after attorney's fees on $250,000. That, to me, seems like once again we're piling it all on the consumer and not on the company.

Mr. MCINTOSH. We need something in the middle, something that works for both.

Mr. TATE. And I think there is agreement. I know that Dr. Wright talked about that many of the drugs that are approved by the FDA have such side effects as blindness. So even some of the things that have gone through that entire regulatory process many times could still be dangerous to the public at large. So we're trying to come up with some way to make sure vitamins like B–12 can get out there to people who want it, and folic acid and other things that prevent birth defects, as well as trying to come up with some reasonable approach.

Any ideas, if you can follow up—I know we don't have enough time here—suggestions on behalf of the workers that you represent, specific ways that we could reform the system to protect workers and protect the consumer and protect the environment, as was stated by Senator Anderson, we would be very interested in having as followup because we want to make this work. We don't want the law of unintended consequences. We've had that. We're trying to get this thing to actually work. That's what we're trying to do.

Mr. GILCHRIST. One of the things that I mentioned that I really believe that we should have is enough money in OSHA, WISHA, and those other agencies able to make sure that you have both. Compliance doesn't really work unless the employer really knows what they're supposed to do. But by the same token, there are employers out there that won't do it unless somebody makes them do that. And the way that it's funded at present, they can't get out to everybody, so, they're chasing the problems after the fact. And

that usually means that somebody in the way of OSHA or WISHA either, that you have in fact killed or maimed somebody. Chasing after the fact doesn't do that person any good or their family any good.

Mr. TATE. Thank you.

Mr. MCINTOSH. Thank you, Jack. You're very helpful.

Our next witness is Mr. Chuck Bailey.

Mr. BAILEY. Chairman McIntosh and Congressman Tate, my name is Chuck Bailey. I'm the director of education and safety for the Washington State Labor Council, representing about 400,000 working men and women in the State of Washington.

Just a couple of very brief comments.

The thing that I want to touch on more than anything else is that while I'm one of the critics of WISHA in this State, I'm also one of its strongest advocates. The reason for that is WISHA has had a longstanding history of involving both the employers and workers, and unions, in most cases, in the process as they formulate regulations to comply with OSHA.

Historically, we have probably had better regulations than even OSHA. In fact, we've led the way for many regulations that OSHA has subsequently adopted, such as asbestos removal, hazardous waste cleanup, and fall protection which were initiated right here in Washington State. Many times they're certainly less than perfect, but they have been the final work of both business and labor people, working hand in hand with the Government. We know it's not always perfect and we know that it always can stand improvement, but we also know that the process works rather efficiently and effectively because we've had the opportunity to have input from all parties. We would suggest that that is at least one method that might be looked at for encouraging regulatory reform.

No one here will argue against the need for reform. I've been dealing in this business for nearly 20 years, and there are yet regulations that I read and read and reread, looking for clarity and understanding. So I understand the ambiguity, I understand the duplication, and I understand sometimes even perhaps the fact that it should have been retired.

Nonetheless, as the previous speaker said, all the cooperation that we get from business and labor is frequently driven by three different things. One of those things is the fact that we have the regulation, one is the fact that industrial insurance costs can fluctuate significantly, based on one's experience, and the other is just the loss of a trained worker. So we have the cost in dollars, the cost in staffing or manpower, if you will, and then the potential cost of the regulation driving this process.

We want to keep our employers competitive. We want our employers to be successful. That's what makes a successful workplace. There has just got to be some good middle-of-the-road thinking by people who have a common agenda to put things in order.

Mr. MCINTOSH. Thank you. I really appreciate that. And I think hitting a middle ground on these things is why oftentimes it gets polarized and you get labeled one way or the other.

You mentioned those three factors as incentives for employers to work with employees to have a safer workplace. Are there any others that you can think of that we might want to think about? For

example, since the bottom line on the books often ends up driving policies in the company because they have to report to their shareholders, what about something that might give them a financial incentive if they've got a good safety record? Would something like that help improve the situation, either some kind of tax break or something that works where you get everybody in management saying, "How do we make sure we've got a really safe workplace because it's going to affect our bottom line?" I think good employees and insurance are two ways that you mentioned that do that. Are there any other ways that we can do that, create that kind of incentive to create a safer workplace?

Mr. BAILEY. Well, I think you raise a very good point. I've often criticized the Department of Labor and Industries as they look only at the cost of accidents and the seriousness of accidents by determining the industrial insurance rates. It would seem that that's a retrospective way of looking at it and that looking at one's current behavior, their current safety records, any outstanding violations, might be something that should also be factored into that equation. Now, not a lot of people have taken that bait, but I still think it's a worthy goal to pursue.

Mr. MCINTOSH. I see. So maybe based on their inspection, their insurance rate, so it's not only just the record of past incidences, but have an inspection and, if you do well on the inspection, that improves your insurance rating.

Mr. BAILEY. Yes. I just think there are a variety of ways that we could look at it differently that would provide the incentive.

Mr. MCINTOSH. Thank you. Randy, did you have any comment?

Mr. TATE. Just one quick comment. In your statement you talked about regulations that you've read and re-read several times. In Senator Anderson's testimony she talked about how cost prohibitive it was to try to eliminate some of these old regulations. In fact, sometimes they won't even enforce them, but the business owner and/or employee will know. Any ideas or suggestions on how to get at that in a cost-effective way? Did you get a chance to hear her testimony? Do you remember that?

Mr. BAILEY. Yes.

Mr. TATE. Any suggestions on how to get at that?

Mr. BAILEY. I don't mean to be redundant, but really I think this is the place where the agency should be calling the stakeholders or the customer, if you will, business and labor, to the table and say we want a standing committee or an ad hoc committee to look at these and help us sort out what makes sense and what are effective and what are those things that are antiquated and no longer necessary and help us pare this thing down.

Mr. TATE. That's a good suggestion. Thank you.

Mr. MCINTOSH. Thanks very much for coming today.

Our next witness is Robert Dilger.

Mr. DILGER. Thank you, Mr. Chairman. Thank you for the opportunity to speak here today. I'm Robert Dilger, and I represent workers in the State of Washington, primarily in the construction industry. It's very interesting to hear what went on here this morning, and your panelists, especially.

I would suggest that if we're going to get to the bottom of what needs to be done on regulatory reform, what we need to do on safe-

ty and what we need to do for the management, contractors, employers, and workers, we need to get all sides at the table. We need to have a panel up here of people who actually represent workers, or workers themselves, and let them explain to you some of the things that have actually taken place and sometimes where regulations aren't followed, even the smallest regulations, and how that has developed into all types of accidents, injuries, and occupational diseases. And I would suggest that we do that.

You've come to the right State. The State of Washington is very professional in doing exactly that. We don't need bureaucrats from Washington, DC—no criticism—we don't need bureaucrats from anyplace, State or otherwise, telling us what to do. What we do need is cooperation and support from those people so we can get the job done.

In the State of Washington, the construction industry came together with its management people, with its labor people and with government people, and we've done some things in the State of Washington I think you should take note of, of the right way to do it. We evaluated what was happening, what was causing the accidents, where the accidents were happening, where the deaths were happening, and, once we catalyzed those, we knew where to target.

We knew that falls from heights were causing the biggest number of accidents and deaths. With the cooperation of our business counterparts, with the cooperation of Government, we looked into that and we developed that we should get away from the belt and go to the harness. We're the first State to adopt the harness. OSHA has not adopted a harness versus the belt. Countless accidents and deaths have been saved by just that one act alone. Both labor and management agreed to that.

Now, just ask yourself, how would you rather fall from a height, with a belt around your waist, or with a harness on you, like you do with a parachute. Naturally, it would be with a harness. Why hasn't OSHA? And I understand that it's because Congress won't let them do so, that Congress is thinking that OSHA should be scaled back. Not new regulation, not where it might cost money to buy the harness or the belt. That's the type of thing.

We also looked at what we need to do on leading edge. Leading edge in construction means where you're always building outward, continually outward. And how do you protect people when you're doing that? Well, we came up with a solution. The solution was a good solution that's used today.

We looked into what we need to do in trenching, we looked into what we need to do with cranes. As you know, we had a crane accident that happened in the Kingdome. We had a couple of painters die.

There are committees ongoing right now. There must be 10 or 12 committees in the State of Washington with both labor and management and the State working out these types of problems.

Another thing we looked at, how fines were being assessed and what those fines were doing, if they were doing any good, if they were doing harm, or if they were just something of compliance. And we found out that in the State of Washington we want them to zero in on those who are causing the accidents. We want them to look at the industrial insurance rates of companies to find out how

many times it's being used by employees, find out why the accidents were occurring, and zero in on those companies.

We had a policy in the State of Washington we changed that the fine could go up by how many times you were visited by an inspector. You could have an inspector visit your job site, have no violations, that inspector would leave, he'd come back on a different date, visit that job site, and you might have a small violation, but that would mean that you had a repeated visit from an inspector which your fine went up. We said that's not the right way to do it, both labor and management. We said let's target those that are causing the accidents, let's find out who is causing the accidents, and that's what we're doing.

I'd like to also point out that in the State of Washington, you can have somebody come into your place of business and you can ask them to go wall to wall and tell you what you need to do to come into compliance. There are no fines involved, nobody is going to give you a fine, nobody is going to give you anything but helpful suggestions. The problem is far too many times employers don't want that to happen, for some reason or another. They don't want it to happen. It's available and it's well known.

When I listened to testimony up here today, when people talk about not having safety committee meetings and they got fined, that's one of the oldest rules we've had in the State of Washington, to have safety meetings, to have people who are working in the plant and place of business sit down and talk about the needs of safety. And if they're not doing that, they're not going to get anyplace along the lines of what's needed to be done to provide a safe workplace.

You listened to horror stories and we listened to them today. We could tell you lots of horror stories. We could be up here all morning long, telling you horror stories. Every time a person has a serious accident, a fall, and somebody don't come home from work, he goes to work and doesn't come home, that's a horror story in itself. And believe me, it's one of the worst types of horror stories.

We cannot base everything on cost alone when it comes to safety. If you're going to do that, what you need to consider in this makeup of what you're trying to reform and what you're trying to do is also ask the question, what would happen if we didn't have the regulation and we didn't have the protection. If it's needed, if they didn't have that, what would be the cost to the company, to the State, to the taxpayers if an accident occurred? It's plenty costly.

Employers in the State of Washington are becoming more safe because they realize that safety is an economic way to go. It's driven by the marketplace—driven by the marketplace. What drives safety? What drives that is the OSHA rules and regulations, the State safety rules and regulations—not redundant regulations, but those that are needed. The reason we have them is because bad practices were occurring. You have all types of people out here who represent workers that go a long way back, and I'm one of them.

I, myself, have had an industrial accident. If we'd had the rules in place when I fell 25 years ago, I wouldn't have fallen, because I wouldn't have been allowed to fall. So that's what I'm saying, regulations could be needed.

Mr. MCINTOSH. I appreciate your comments, and, frankly, if you don't mind, we'll end up citing you on a couple of these propositions, because I agree with you.

Let me clear up that when I talk about benefit costs, and I think also when Randy does, it's not an end-all, be-all of a decisionmaker, but it's a way of setting priorities. For example, if the benefit goes up when you switch from a belt to a harness, then you should use that analysis to say, well, it's better to use a harness than a belt because we maximize the benefits, and look at it that way. Unfortunately, it's become perceived as saying we're going to trade off the costs of safety with the economic costs, and I don't think that's how it should be used at all. It should be a tool to evaluate different approaches and say we can maximize safety here and minimize costs by focusing on it this way. And then that's where I think it's helpful.

Mr. DILGER. Sure. If I might go a little farther on the issue of the harness versus the belt, when that first was proposed in the State of Washington, I had a meeting with the director of Labor and Industries at that time. I sat down with him and said, "You know, we need to really look at this. We really need to do something to bring that about."

Mr. TATE. What year was that, if I may interject?

Mr. DILGER. That was probably during 1992, I think it was, 1992. Yes. Joe Deere was the Labor and Industries person. He's now the head of the OSHA. I was told at that time by that person that "If we're going to do that, we have to really find out what the cost is. That's a terrible cost to put a burden on the employers to go from a belt to a harness. You're really going to have to prove to me, Bob, that that's going to be a safer way." And I said, "Well, it just makes common sense."

Now, a month later an employer came to me and said, "When can we get something done on the regulations so we can go to harnesses?" An employer. We went back then together and, oh, it was an automatic thing. Boy, we really had to work at it. So you see, sometimes what seems to be a cost, what's going to be a cost from somebody else's viewpoint, isn't at all. You ought to look at the records here in the State of Washington, how we have taken action. It's down. Every place they go, they want to know what we're doing here right.

Mr. MCINTOSH. I appreciate that. One of our theories in this committee is to get out of the District of Columbia, and go see where it's working. So I appreciate you coming forward today. We'll take up a lot of your ideas in terms of how you can reach out to a broader——

Mr. DILGER. Well, I would hope you'd have a panel of some workers.

Mr. MCINTOSH. Yes, we'll do that. Thank you.

Mr. DILGER. Thank you.

Mr. MCINTOSH. Our next speaker is Ms. Sharon Waller. Sharon, thank you.

Ms. WALLER. Hi. I'm a local small manufacturer of a coating solution, and I also am part owner in a warehouse complex here in Auburn. I just thought maybe I'd state some of the things that I'm having to do for compliance.

There's the title III to fill out, the Puget Sound Air Pollution paperwork, this year we've gotten hit with the volatile organic compounds. Several years ago California disallowed solvent coatings. Now, we find out Portland and next year the whole country will have limits on solvent coatings that can be sold. Storm water permits, anytime I unload a truck in the parking lot, I have to have this storm water permit that's just for my purpose. Hazardous waste identification numbers, MSDS, right-to-know manuals. I've got three people working with me, and I have to have all of this stuff in my office. Forklift training would be anywhere from $300 and up to train each of these forklift people. We've never had a forklift accident in 25 years. DOT training manual, that's again for our benefit. Three people, I had to come up with a book and train all three of us.

United Nations packaging is also increasing the costs for products like mine to be able to ship around the country. A lot of commonsense regulations.

You mentioned the 5-gallon bucket, and I kind of laughed, because that was on my list. I don't understand what good it's going to do to have a picture of a baby falling into a bucket to warn against drowning. That same child is going to drown in the toilet, if it's going to drown in a bucket. But we have to go to the expense of getting that picture on all cans now—in California, in two languages.

Small businesses like mine pass on from generation to generation. In the lumber industry, we're finding ways around that by giving your children under age 10 interest in your company, if you think you might want to pass on to the next generation, so that they don't get hit with inheritance taxes. I don't know of any 10-year-old that knows that they for sure want to go into mom and dad's business, but that's one way that some of the lumberyards are taking care of it, according to one of the associations I belong to.

I find out a lot about my compliance things by belonging to associations, not from the government itself. If I read in a newsletter that something was supposed to be in compliance to a lumberyard, I know that 2 years ago I should have known that. So then I call the government offices in Olympia or Washington, DC, and I get, "It's your responsibility to know what's in the book." I don't get, "Call this other office and they can come out and help you." They just tell me, "It's your responsibility to know what's in the book."

I go to seminars to find out what's going on for hazardous waste, underground storage tanks, and such as that. We went into Seattle and one gentleman got up and asked about the storage of hazardous waste in his facility. He had paints or I don't know whether it was oil products, or what. They couldn't answer him.

So I got up and said, "Give us an idea of what it's going to cost. We're all here to find out how to comply, or we wouldn't be here." And the guy in the front of the room says, "Well, you'd better have deep pockets."

The small businesses are wondering is it going to cost us more to comply than we can afford, or is it cheaper to let it go and get the fine later? I found out that it's not so expensive to comply when I took my underground storage tanks out. They were under $10,000

to remove. Well, at that meeting it sounded like it could be hundreds of thousands of dollars.

Well, small businesses can comply. But when we're talking to our officials and they tell us, "You'd better have deep pockets to comply," what do we do? And so, then we're always sitting there wondering, well, did I do everything that I'm supposed to? I've got a whole drawer of compliance things that I'm trying to comply, but it's always in the back of my mind, "Did I do everything?"

Mr. MCINTOSH. Thank you for coming forward. Small businesses are often the ones that create the new jobs in this country. I was going to ask you, when you look at the regulations that you have to comply with in your business, do you ever have to make a choice between complying versus hiring more people? Is that something that ever comes up in your business?

Ms. WALLER. I have had to go to outside sources to find out how to comply on some things. And that's extra expense, you know, the DOT training. I've been fortunate. When I've had officials come into my business, they're usually quite understanding. That's because I usually pull out all the paperwork and say, "OK, help me do this and help me do that." And when we got the air pollution, when those permits first started coming out, I called them up and asked, "Well, what can we do and how do I know how much is going into the air?" And after that, I found out it was too small to matter.

But still, even though we've got a small business, that doesn't mean that we think that we shouldn't comply like the bigger businesses. We would like to protect the environment also, but sometimes the paperwork that comes in is so thick that you find out in the last line of the document that under 10 employees doesn't have to do this. It would help if it was earlier in that paperwork.

Also, when the DOT came in, now I have an ally in the DOT, I can call him up and say, "OK, I'm getting lots of paperwork for seminars." The seminars cost $300 and they always come in with "Are you in compliance?" in bold letters. And so, I call up, if I've got somebody to talk to in Olympia, then I can call him and say, "Is this something I have to do, or is this an added expense?"

Mr. MCINTOSH. An advisor.

Ms. WALLER. Yes.

Mr. MCINTOSH. It makes sense. Randy, did you have anything?

Mr. TATE. I didn't have, other than I just commend you for wading through these regulatory waters. I know that it can be very challenging, and any suggestions you have, we hope that you'll send them.

Ms. WALLER. Well, I liked the idea of when an inspector does come in, they give you ideas. Small businesses don't have the chance to go out and see what their competition is doing down the street. And an inspector that comes in might know, "Well, you can make this safer by doing such and such." And then I can say, "Well, where do I get that item?"

Mr. TATE. They become a resource.

Ms. WALLER. Yes.

Mr. TATE. Good. Good.

Mr. MCINTOSH. Thank you, Sharon.

Mr. TATE. Thanks for waiting.

Mr. MCINTOSH. Our next witness will be John Jovanovich. Welcome, today.

Mr. JOVANOVICH. Thank you very much for hearing me out here today. I'm here to talk about the Commerce Department, the Customs Department, and the International Trade Commission.

I feel like the person that was thrown in jail for a crime he did not commit. And I think that the people that are my competitors are in the same boat.

In the early 1970's, Commerce got a complaint that Japanese netting was being dumped on the market here at less than fair market value. This complaint was down in the Gulf of Mexico somewhere, completely different fisheries than the customers that we service. We service the fishing fleet for the Pacific Northwest and Alaska. And I would like to say that I don't import anything that's available here in the United States, only what is not available. So the folks in the Commerce Department and the International Trade Commission decided that there should be dumping duties imposed on fish netting from Japan. And I would point out that there are many kinds of fish netting. There are trawl netting, shrimp trawl netting and beam trawl netting, gill nets, there are purse seine netting, crab netting. And so we were all painted with the same brush. So they began to suspend the liquidation of these entries, and they didn't liquidate these entries for a good many years, for about 10 years.

Mr. MCINTOSH. What does it mean to liquidate an entry?

Mr. JOVANOVICH. It means to finalize the paperwork, and if there are any dumping duties, you impose dumping duties, or whatever. So in the meantime they're charging interest on these dumping duties, compounded. And so when they finally started liquidating these entries, the cost was not only the dumping duty, but, in most cases, much higher than the dumping duty itself, because of the interest factor.

In one particular case I imported some special floats, and they came in with my netting from Japan. And the Customs folks here in Seattle took the position that this made up a complete net. Well, it cost me over $6,000 in attorney's fees. I took it all the way to the Court of International Trade in New York, and I won the case, and they charged me about $2,100 in excess duty, which I finally got back 13 years later with no interest paid. They said they couldn't pay the interest because the rules and regulations didn't allow them to pay the interest.

So what I'm asking here is that you folks have a full committee hearing on this matter of importation and the Customs policies so that we can get these matters resolved and get some relief.

Now, we had a hearing with the folks at the agency level down in Portland, and you were not allowed sufficient time to make your presentation. If you asked for 40 minutes, you were lucky if you got 10. The guy hit the gavel; that was it. Having been in the legislature myself, I know that you don't deal with bureaucrats. You have to go to the people who are above the bureaucrats. The bureaucracy is layered and layered and layered, so it's almost impenetrable. So I'm asking that we have a full investigation of this matter and revisit this dumping duty finding of 1972. This issue is still going on

as it regards certain types of salmon gill netting. It's been going on for 24 years.

Now, if there's something wrong, I think that everybody has a right to a speedy hearing to take care of the problem. Only the U.S. Government would take 24 years to resolve a matter.

We have people in the Commerce Department who are telling us what salmon gill netting is. It has to be made up a certain way and it has to be colored and it has to have a certain kind of knot. These are people who probably don't know anything about fish netting. So the solution to this is when they come up with these rules and regulations, they should go out into the field and talk with people who are knowledgeable so that they have a definition of what is being violated as far as dumping. The dumping complaint they had in the Gulf area has absolutely nothing to do with salmon gill netting. I, myself, have suffered tremendously. You might take the position, well, why don't you sue the Government. But the irony there is the Government fights you with your own funds. And so, that is why I'm asking that we have a full hearing on this matter and take a good, hard look at Customs because people at these lower echelons just take the rules and regulations and interpret them as they see fit.

There is just one other point I'd like to make. I think you folks have power over the States and how they interpret and make rules and regulations. Recently, I learned of a violation in Alaska. They fined the guy because his net was too long. Well, when you're fishing and you're stretching that net, nylon rope is like a rubber band. They made him cut 8 fathoms off of his net. When they took the net into Petersburg, the fisheries folks would not go to Petersburg and measure it on the dock, and you can't hang a net in the water. You have to be standing on dry land. Well, it was 8 fathoms short. And this is due to the stretch factor. Now the folks in Alaska tell the guy, "We'll drop the charges and we won't fine you, but we want to keep the fish that we confiscated from you," 3,400 dollars' worth of fish. This is asinine, and someone has got to stop it, and the people in the bureaucracy are not going to stop it. It's going to be up to folks like you.

So I do ask that we have a full hearing on this and that we revisit this, because it affects not just me, as a small businessman, but my competitors and the thousands of fishermen who use this net. This net is not produced in the United States. I believe in buying American. The only reason they use it from Japan is because nobody has ever been able to duplicate it. And it affects anybody who eats fish. If your wife goes to the market and she buys a piece of fish, it's costing you more because of these crazy antics that are going on in Washington, DC.

[The prepared statement of Mr. Jovanovich follows:]

To Members of the House Government Reform Subcommittee on Regulatory Affairs:

Dear Committee Members:

My name is John Jovanovich. I live in Seattle. Washington and for over twenty-six years I have owned and operated a business there. Our company, Jovanovich Supply Company, is in the business of supplying commercial fishing equipment to fishermen in the Pacific Northwest and Alaska. Almost all of the business we do is with commercial fishermen who catch fish with nets. Specifically, we do business with Gillnet fishermen and also with Purse Seine fishermen.

Gillnet fishermen use a type of nylon netting that is attached to a rope that has a sufficient number of floats strung on the rope to keep the netting suspended in the water. The bottom of the netting is attached to a rope that has a lead center core. By being attached to a float suspended rope at the top of the net and a lead weighted rope at the bottom of the net. the fishnet becomes a vertical wall of netting. The fish are caught when they try to swim through the diamond shaped mesh openings that make up the netting. Once they pass beyond their gill plates, they become caught. Most of the netting we sell is this type gillnetting which we import from Japan.

Purse seine fishermen use a much heavier gauge netting that is much more durable and lasts much longer than gillnetting. We do not import purse seine netting from Japan because their prices are not competitive with domestic made netting.

The only netting we import from Japan is salmon gillnetting that is used for catching the various species of salmon in the Pacific Northwest and Alaska.

All of the companies that service the salmon fishing fleet in the Pacific Northwest and Alaska have been severely and unfairly penalized on the salmon gillnetting that they have imported from Japan. This situation has existed for over twenty four years and is still in existence for some types of salmon gillnetting.

Importers of salmon gillnetting from Japan have unfairly paid hundreds of thousands of dollars in dumping duties and hundreds of thousands of dollars in attorney fees. In 1972 the Commerce Department declared that Japan was dumping fish netting on the U.S. market at less than fair market value. It is important to note that there are many kinds of fish netting. Salmon gillnetting was not specifically mentioned in the dumping finding. i.e., every type of fish netting was unfairly lumped together.

The Federal Government has changed their definition of salmon gillnetting on several occasions which clearly indicates a lack of fishnetting knowledge by the person or persons who made the original dumping finding and the subsequent definition changes over the years that were made by others.

Not one U.S netting maker has ever been able to duplicate the technology and quality of Japanese made gillnetting. As of this writing I do not know of any U.S. net

maker who is making or is capable of making salmon gillnetting of the type and quality of Japanese made salmon gillnetting. Not only are they not capable of and are not producing such salmon gillnetting, they never have been capable of doing so. The dumping finding of 1972 should never have been applied to all types of fish netting from Japan.

I have been in contact with my competitors on this matter. We request that a Congressional level hearing be held on this matter. Trying to deal with Government bureaucrats at their agency level has had no results, only frustration. This unfair situation has had a very negative economic effect on the thousands of commercial fishermen who demand high quality Japanese made gillnetting. Moreover, it has also had a negative economic effect on consumers of fish, because it has unfairly had a bad effect on the price of fish.

There is no good reason that such a situation like this be kept ongoing for over 24 years by agency bureaucrats that have insufficient knowledge of what they are dealing with. We have experienced only frustration at the agency level.

Please consider our request for a Congressional level hearing on this matter. We would travel to Washington, D.C. to testify.

Sincerely,

John Jovanovich

JOVANOVICH SUPPLY CO
11227-18th PL., S.W.
SEATTLE, WA 98146

Mr. MCINTOSH. Thank you, John, I appreciate that. That's very helpful.

Randy, do you have anything?

Mr. TATE. No, I didn't, other than I am aware of your particular situation. You've been in contact with our office. And any other ideas regarding this, let us know.

Mr. JOVANOVICH. Well, my idea would be to, when you have people in these agencies, get people who are knowledgeable and know what they're talking about. These people that come up with these rules and regulations do not know what they're talking about. Let's say, for instance, someone in Japan was making a machine that peels carrots, and he was dumping them on the market here. You can't just say that all machinery coming from Japan is being dumped on the market here. That's precisely what happened to the people who are importing fish netting. Thank you.

Mr. MCINTOSH. Thank you. Good points, John. We appreciate that greatly.

Our next witness is Mr. Wayne Thueringer.

Mr. THUERINGER. I don't represent anybody. I'm a rank-and-file carpenter, I'm a constituent in your district, and I'm here to kind of give you an earful about this OSHA regulatory reform and all of this stuff.

Now, as a private citizen and somebody who watches you guys on C–SPAN and the rest of it, I see things that concern me. When the Federal Government spends years accumulating regulatory authority and exercising it to protect people and then you seem to be setting the table to abdicate this responsibility, I think that two things happen. No. 1, you are hurting any future efforts at that kind of protection at the Federal level. And No. 2, you establish the precedent of allowing it to go down the line below your level. If the Federal Government can abdicate their responsibility to protect workers on the job with effective OSHA laws, then the State of Washington can do the same thing and abdicate their responsibility down to the county level, and then down to the city level, and ultimately down to the contractor.

As somebody who kind of came up in this on and off since 1964 with the old man, I can tell you that I have seen blatant, absolutely blatant disregard of safety laws in this State. The only reason that they occur is because the State does not adequately fund the enforcement arm of the Department of Labor and Industries, and there is a huge underground economy in construction that benefits directly from that and that costs all of us millions and millions of dollars a year. The signal is sent from the top, and I submit to you that if you send that signal out that it's OK to have cost-benefit analysis and all the rest of this as a means of allowing business to ultimately violate the law, or mitigate the circumstances involved in being fined for a violation of the law, you're putting it to everybody out here, all the working folks.

We have drunk driving laws in this State. You can't drink and drive. Now, we still know people drink and drive. Should we abandon the law or repeal the law? Certainly not. People would go crazy. They want to strengthen the law. So they don't advise you, they don't consult you, they don't assist you, except maybe into the

back of that State Patrol car on your way to the can. Fines are imposed because that is the only way to get somebody's attention.

Maybe in December, if you guys are unemployed, you can come back up here and we can go out. I'll give you an example of how you can use regulations that exist now to get around the law, to get around regulation. You come up here and you come to me and you say, "I'm looking for work." And I say, "OK, what kind of experience have you got?" You say, "Well, I've been in Congress." I say, "OK, we'll put you to work as a laborer."

Mr. TATE. Nobody would hire us.

Mr. THUERINGER. You could be a laborer. OK? We'll put you to work as a laborer. The fact is that you don't have to be my employee, I don't have to pay you an hourly wage. I can get a 1099 form from the Federal Government, Department of Internal Revenue, and hand it to you. You fill that out. Now you're an independent contractor. You're on the hook for L&I, you're on the hook for Social Security, unemployment compensation. All of the laws and regulations that are set up to protect employees have all been violated in one fell swoop, one piece of paper, and it's done with the complete compliance of the Federal Government. Take a look at that, when you get back there. Let's knock that off. We know what an employee is.

Do you want to apply common sense? My father used to say, "Common sense is not that common." I've got to believe that. So that's basically all I wanted to tell you.

Mr. MCINTOSH. Great, Wayne. I appreciate you coming today. It's good to hear from you.

One of the things that I sometimes worry about, particularly actually more than some of the environmental areas, is are we going to actually end up costing us some of those jobs. I worked in a foundry to put myself through college. That is now closed because of the Clean Air Act—which I believe in, I think we need to have cleaner air, but the requirements on that place were so much that they said, "We're going to close our doors," and so they don't hire anybody, at this point. So that's one of the things we've got to watch out for, less in the area of safety than some of the other areas in the regulations that we've been looking at.

Mr. THUERINGER. That's true. And I would only like to point out further that in most instances violations of the law aren't discovered by Government and they are not brought forward voluntarily by the employer, they are brought forward by the guys who are doing the work. There are things that an employer would ask me to do on a job that I can say, "No, I won't do that because it's unsafe." He doesn't have the right to fire me. I'm in the union. I'll go to my business agent and I'll raise hell. And he can't do that. But if I'm out there working on a house and I tell the guy, "No, I'm not going to climb up on that roof without a harness," or, "That ladder is too rickety," or something like that, he sends me down the road and I don't have any protection.

Mr. TATE. So there is no current protection for something like that. So if we were to enhance a whistle-blower protection of some sort, where you were placed in a situation where you were at risk, where they did not provide, for example, a harness——

Mr. THUERINGER. Absolutely. Absolutely. If you've got a regulation that's going to focus—you say you want to get the guys that are in violation of the law. I'm suggesting to you that before you can do that, you've got to be able to find the people who are doing it, and that means getting underneath this underground economy.

Mr. MCINTOSH. OK; that makes sense.

Mr. TATE. The guy that's going to be underground probably isn't going to obey the law anyway, by definition.

Mr. THUERINGER. That's right. He's underground. He doesn't care if you're underground or not.

Mr. TATE. Thanks for your comments.

Mr. MCINTOSH. We have a couple more people who submitted forms. Judi Moody. Judi, are you here?

Ms. MOODY. Hi. Thank you both very much. I'm here on behalf of small business. I have a small business now, and we don't have any employees, we have independent contractors with 1099 forms, like the guy just said, but ours are independent sales people who sell multiple products and don't work exclusively for us.

But we also are contemplating opening a retail store. And we went to a food show, for instance, in the Kingdome a couple of weeks ago because our store would merely require having an espresso stand. We want to have a book and gift store kind of thing. So we were walking around, tasting all the food and looking at the espresso carts and everything and having a good time, until we came to the Labor and Industries table. And we found before we even open the door we have to go through about 25 forms, 25 books, we have to hire a lawyer, we have to get industrial insurance. We maybe will have one or two employees on an hourly wage and they get to keep their tips from the espresso cart. I realize these are State regulations I'm talking about, but it just piles on and piles on and piles on. I understand the IRS Tax Code now has more pages than the Bible, more words than the Bible. And I'm afraid that EPA and OSHA are probably getting close to that.

So I'm just here kind of as a citizen and a business owner to urge you guys to pass commonsense regulatory reform because it benefits us all. It will have an impact on how many employees we hire or how many employees we can absorb from the large industries that are laying off, like the 40,000 people from AT&T. I don't think anybody here has really focused on that today, except you two, briefly. People like us are going to be picking up that slack. And if you're going to make it so hard and so burdensome that we don't even want to do this now, that we're having second thoughts, and I don't even want to open the door because I'm afraid they're going to shut me down before we barely get 2 feet in the door, what kind of an incentive does that produce for people like me who want to create jobs of the future?

And I haven't even touched on environmental regulations. Randy is well aware of my stand on that. That's a job killer too, the way it's become. I have a feeling that the Endangered Species Act and the Clean Water Act and the Clean Air Act were certainly the best of intentions when they were first imposed many, many years ago. And they've become so burdensome and such boondoggles and such irrespecters of private property rights and of employment and job

rights that they're almost impossible to deal with for a society that wants to move ahead and not behind.

So, I guess I'm just here as a private citizen and as a business owner, urging you to pass commonsense regulatory reform. Thanks very much.

Mr. MCINTOSH. Thanks, Judi. Let me ask, did you decide to go ahead and open the new retail store?

Ms. MOODY. We're still talking about it. It's almost not worth it. The business we have can support us, but we'd like to do something that would bring us more into the future of a semiretirement status, rather than beating the rat race trying to make sales every day that we do. And it's beyond my comprehension that I even want to invest my time, invest my money hiring people, worrying about this all the time. I can't conceive of even doing it now. I was so full of enthusiasm until we went to this one show, and it just went out the window in a heartbeat.

Mr. MCINTOSH. Judi, we hear about this from a lot of people. You can multiply that a million times around the country, people have a new idea, they've got their dream of starting a small business and creating something out of nothing, and they run smack into the wall of redtape and regulations. It also happens with some of the bigger companies.

I remember when I was working on the Competitiveness Council, the people who make the little computer chips, National Semiconductor, said they were just about to set up huge new plants on the West Coast, and they were looking at facilities, I believe, up here, in California and in New Mexico. Their lawyers come in right at the last minute, as they're about to let the contractors build the new plants. And these are environmentally pristine plants because they have to keep all of the dust out of it so it doesn't destroy their product. And the lawyers came in—you've got to look at one thing. We're going to get a new requirement on the Clean Air Act that you have to fill out a permit every time you change your manufacturing process, so you've got to add in this extra cost for each of these new factories. At that point the company said, "Look, we were already looking overseas. This tips the balance and we're going to open this up somewhere else outside of the United States."

Those are all jobs that are lost on an environmental regulation that doesn't help us at all with clean air because it's all paperwork. These are already very clean factories, by the nature of their job. And it was frustrating to hear this example where you didn't get any benefits, really, for the environment, but you did lose all of the jobs they would have created for us here in this country. So what you're going through in making that evaluation, "Do I start a new business? Do I hire more people?" is a really important factor in all of this.

Ms. MOODY. Thank you. And I do believe that that is one of the main things that this Congress should emphasize in dealing with regulations, and environmental regulations also, is citing specific examples of jobs lost overseas because of excessive layer on top of layer of regulations. And rather than trying to say we're going to be just as green as the other guys, that's not going to work. What is going to work——

Mr. MCINTOSH. No; they're laughing at us.

Ms. MOODY [continuing]. I know—in terms of framing this debate is exactly what you're talking about and my little experience here. Thank you both very much.

Mr. TATE. Thanks, Judi, we appreciate it.

Mr. MCINTOSH. Thanks.

Our next witness is Mr. Gary Smith. Thank you for coming.

Mr. SMITH. Thank you, Mr. Chairman. I'm Gary Smith, executive director, Independent Business Association. I am a small business owner, also.

There is a big need out there for reg reform. You heard earlier about 58 sets of regulations by 28 different Federal, local, and State agencies. That's a stack about this high. [Indicating.] That's what it accumulates to. There are over 100,000 different regulatory requirements any small business owner who opens up the door and hires an employee has to comply with every day.

The fact is there is nobody in Government that knows all the regulations a small business owner has to comply with. You can't call up one person in the Government and say, "What regulations do I have to comply with?" Try and put somebody on your staff who knows all of the regulations that somebody in a restaurant or a construction company or a manufacturing firm would have to comply with. They can't do it. It's humanly impossible to do.

The challenge is, a small business owner is supposed to know all of those regulations plus know how to operate a small business successfully and do it. We have to have regulatory reform. Now, Washington State recognized this, and Senator Anderson's testimony was quite eloquent.

I'd like to make one clarification to a previous statement. I'm not sure it was real clear. The previous speaker said that Washington State had turned down regulatory reform. In fact, Washington State passed comprehensive regulatory reform in 1995. It's our House bill 1010. It was a good start on regulatory reform. We're not done, but it's a very, very good start.

Mr. MCINTOSH. And that passed and was signed into law?

Mr. SMITH. It was signed into law, sir; yes.

I'd like to talk about six key elements that I'd encourage your committee to look at.

The first one, education before enforcement, is a concept that we introduced in the State of Washington several years ago. Previous speakers have talked about well, it would be a good idea If Government could come out and advise business people, but how are we going to afford all of this? Well, I'm here to tell you that we've already done it in the State of Washington with one agency, and we increased the efficiency of that agency and the productivity of the employees 80 times. That's a pretty big claim; 80 times.

This agency was the Department of Ecology. In the past they went out and did a very formal inspection of a small business. They went back to the office and wrote everything up. They documented everything and they got ready for the appeal because most people appeal their findings. Sixty hours per inspection. They went out and did education before enforcement—in the automotive industry, 45 minutes per visit. They visited over 1,700 businesses in a 3-month period of time, more than they normally do in a 2- or 3-year period of time, and they increased compliance by those businesses

by an unbelievable amount. It works. It's not just theory, it works, and we have a report here in the State of Washington to show it to you.

You need to review the existing regulations on the Federal level. We've been trying to do it here in the State. It needs to be done. When we can get down to a point where there is somebody in Government that understands all the regulations, we've got a chance to win so that employees, employers, and the Government know what we're supposed to be doing.

But until we get down to that level, it's going to be impossible for everybody to know what they're supposed to do.

You need to establish a criterion for regulations. Now, there was concern about cost-benefit analysis by a previous speaker. The fact is that that OSHA regulation on fall protection that was proposed caused more harm than good because of the confusion, because it's excessive, and because of its ambiguity. That's why, if you go through a set of criteria which includes cost benefit, you'll end up with a regulation that's right the first time.

What's going to happen with that Federal regulation is it's going to take three shots to get the regulation right. In the meantime, the workers, the employers, the Government are all sort of in limbo through this whole period of time, and they're spending money needlessly.

You need to have clear and specific congressional policies. Please don't enact broad statements that say let's go do this, like, "Let's go clean up the air. Here, Agency, you go write the regulations." You need to be very specific. We've run into a lot of problems because congressional or State-enabling statutes are overly broad.

You need to look at your existing grants of rulemaking authority for agencies. Are they again overly broad?

And finally, you do need judicial review of the Reg Flex Act statements.

Mr. MCINTOSH. We got that this week.

Mr. SMITH. We got that. You passed that.

Mr. MCINTOSH. Yes, we got it into the debt ceiling this week as part of our regulatory reform.

Mr. SMITH. Well, congratulations. That's great.

Mr. Chairman, Congressman Tate, I appreciate your being here. I hope that's helpful to you. We're more than willing to assist you with additional information of what has worked in Washington State for small businesses and how it can work on the national level.

Mr. MCINTOSH. Gary, thank you very much. I appreciate your testimony. It's unfortunate we've only got one out of the five things. I wanted to ask a real quick question before turning it over to Randy.

You mentioned this idea of education before enforcement, which I think is a fascinating one, and said that they were able to decrease the time it took for visits from 60 hours down to 45 minutes and had an increase in compliance. Was there any measure of that increase in compliance that you're aware of?

Mr. SMITH. Of the businesses they visited, they believe that there was—and I'm doing this off memory, if you will, Mr. Chairman—but I believe the increase was at least 80 percent of the firms un-

dertook one or more of the required activities as a result of that visit. Now, I don't know how many they had to undertake, but there was an increase in compliance.

Mr. MCINTOSH. These were activities they hadn't done before.

Mr. SMITH. These were activities they hadn't done before that they were now coming into compliance with, and it was working extremely well. The businesses—this will be shocking—the businesses were welcoming the inspectors in. There were no citations, this was a freebie, "We're going to come in and tell you what you need to do. If we come back, we're going to cite you if you haven't done what we've asked you to do." But that's a tremendous increase in efficiency in Government with the same number of people.

Mr. MCINTOSH. If you've got any literature on that or could go back and check those numbers for me, we'll keep the record open for 5 days for all of the witnesses to update it, but that would be particularly helpful to us, if you can send that.

Mr. SMITH. Mr. Chairman, I will send you that report from our State Department, and they are the ones who prepared it. We didn't.

Mr. MCINTOSH. Great. I appreciate that. Thank you.

Randy, did you have anything?

Mr. TATE. No; that was the question I was going to ask. I'd love to have more information regarding that. That's great.

Mr. SMITH. Yes; thank you.

Mr. MCINTOSH. This is great, Randy. You are right. We're going to learn more here, coming to Washington.

Mr. TATE. Yes. I told you.

Mr. MCINTOSH. This is working well.

Our next person who signed up is Mr. Lloyd Gardner. Mr. Gardner, are you here?

Mr. GARDNER. Mr. Chairman, it's great to have you people out here to find out what our problems are, what our concerns are.

I think that the gentleman before me indicated some of what I wanted to express. Here in this State we have an organization called the Evergreen Freedom Foundation that has done a lot of study in the area of regulatory reform. They have tried to find out about good programs that have been undertaken all over the country, and I think they've done a good job on it. They have produced a book, which I'm sure Congressman Tate is familiar with, entitled "Reducing the Size and Cost of Government." This is a very recent publication. One of the sections in this book deals with regulatory reform. Of course that is one of the areas that is, I think, very important, that may be not so much of significance to the people of Washington because it would reduce the cost of Government. But I think that small business is so encumbered by some of these regulations, that they themselves are bearing a burden that the Government can't even understand. I've been in small business, I've been in the restaurant business, I know all the problems that Pat Cattin has had and many of the other people here, so it is very difficult.

Now, a couple of points from this report. One of the things that hasn't been mentioned today is that a lot of the regulations that are written both at the Federal and the State level no one can un-

derstand. You'll remember that not so long ago there was a great effort on the part of the insurance companies, or the Government, maybe it was, that insurance policies be written so that an average individual could understand them. Now, I think this is also true, and I think it's been indicated here in the comments today, that there are lots of things that people can't understand. Regardless of what the regulation is, if it's in favor of somebody or against someone, at least they need to know what it means. When the people who are starting to administer it cannot explain to people in a seminar what it is that they were supposed to do because they, themselves, didn't understand it, then I think something needs to be done. Maybe we ought to just put it into some words that people can understand. That would be at least one of the points.

Now, there is another point that I'll make, and that is with respect to Mayor Goldsmith, the mayor of Indianapolis. I just noted this, that he has had probably a very well-put-together regulatory commission that has made a study, and they've used the cost and benefit analysis and everything else there. And in that particular city they have estimated that that activity, that function that they undertook, has saved $20 million to $50 million in Indianapolis itself.

I read a book on my vacation recently, "Roots of the Revolution," that was a Reasoner Foundation type, and I think that was a great book because it addressed this problem, along with many others, and I think we need to look at the solutions that have been found in other States. I think Washington is doing a great job in many areas, as has been pointed out today. They're on the leading edge, in some cases, but we certainly don't want to be on the leading edge of excessive regulations and uninformed regulations, and we're possibly there, too.

Thank you for your time.

Mr. MCINTOSH. Mr. Gardner, thank you. If you have an extra copy of that Evergreen Freedom Foundation report, we can put that into the record.

Mr. GARDNER. There are a few underlines. You can have it.

Mr. MCINTOSH. All right, thank you. I appreciate that. That would be helpful to us.

Three other people indicated they wanted to come forward. I wanted to see if they were here today. Bonnie Pagnum. Bonnie, are you with us? Thank you for waiting. I appreciate that.

Ms. PAGNUM. I'm Bonnie Pagnum. I'm a patient of Dr. Wright's, and my son is a patient of Dr. Wright's.

The FDA came to my home a couple of years ago after the raid. I wasn't there. My husband was home. They came in a large, white van, a man and woman, flashed their badges at my husband, said they wanted to speak with me. And he said, "Well, if you want to speak with her, you have to make an appointment."

And so they did call that day, the woman called, and I'll give you the name on request. And she said, "I have questions for you regarding you being a patient of Dr. Wright's." So I said, "Well, how do you know I'm a patient of Dr. Wright's? How did you get my address, how did you get my phone number, how did you get my name?" She said, "Well, I don't know." And I said, "You mean, you're calling me and you don't know any of that?" And she said,

"No." And I said, "Well, I'll be glad to talk to you. I'm just on my way out the door, but if you'll call me first thing tomorrow morning, I'll answer any of your questions. And that will give you time enough to ask and find out how you got my name." Of course, I knew all of his records were taken. So she said, OK, she'd call first thing in the morning.

I went down and bought a tape recorder and put it on my speaker phone. I figured if I was going to be alone in the house with nobody else listening to this conversation but the FDA, I was going to have proof of what was said. Well, unfortunately, no one phoned back. I don't think they wanted to be questioned. They're used to doing the questioning.

Mr. MCINTOSH. That's amazing. They had determined who your doctor was, but wouldn't reveal to you how they knew that.

Ms. PAGNUM. Yes, and they wouldn't reveal to me how they got my name, address.

Mr. MCINTOSH. This is disturbing. What I'd like to do, rather than go over it today in the public forum, is perhaps have some of the investigative staff contact you about this and look into whether there have been any abuses of the Privacy Act or things of that nature that this may have indicated. That is just amazing to me.

Ms. PAGNUM. And if you want to ask me any questions about my son and I being patients, I will say that if my son—I believe if he hadn't been under the care of Dr. Wright, he wouldn't be alive today, and I would be in a wheelchair.

Mr. MCINTOSH. Really.

Ms. PAGNUM. Yes.

Mr. MCINTOSH. What type of therapy or what were you treated for?

Ms. PAGNUM. Well, both of us are very, very allergy sensitive. And I got to the point I couldn't close my hands, they were so swollen, I couldn't walk, I couldn't go upstairs anymore in our house, my knees were so swollen, the whites of my eyes were all blood red. And anyway, Dr. Wright has an Entero machine, and it's for testing allergies. And I had had allergy testing at other allergists over the years, but never anything as intense as the Entero machine, which is noninvasive, by the way, which is wonderful. And you can see the results on the computer as soon as it's being done.

Mr. MCINTOSH. That's terrific.

Ms. PAGNUM. Yes. Yes. And my son was so allergic to environmental things, as well as foods, and he had gone through years of having allergy shots and he had been to the best hospitals in the Northeast, in the New York area, and he'd been up to the Asthma and Allergy Clinic next to Children's Orthopedic; he's had the best doctors, and he wasn't thriving. He was just dying before our eyes. And so, with the homeopathic drops that he got, he is able to eat everything now. They told us in school that he wouldn't go on to college. He got a scholarship to college, he grew to be 6 feet 3 inches, he played Pac 10 baseball as a pitcher. Now, that took a lot of energy.

Mr. MCINTOSH. What type of drops are these? I'm unfamiliar with that.

Ms. PAGNUM. They're homeopathic drops, and you just put them under your tongue. So there were no more shots in your arms. I mean, this worked for him, and it worked for me.

Mr. MCINTOSH. That's wonderful.

Ms. PAGNUM. And the crime is wanting to put him out of business. I've sat in his office and talked to other patients and it's just wonderful, wonderful stories that are happening in there. And there is nothing dark and secretive about his place. And I was so sensitive that I had to take some of those B vitamin shots that didn't have any preservatives in them.

Mr. MCINTOSH. And you survived?

Ms. PAGNUM. I survived. I thrived.

Mr. MCINTOSH. Thank you, Bonnie, I appreciate it.

Mr. TATE. Mr. Chairman, you'll hear story after story about people that Dr. Wright has been able to help.

Ms. PAGNUM. And he isn't arrogant about his answers. You can question him, and I am the kind of person that does ask a lot of questions. I always got answers.

Mr. TATE. And the other point, we would love, and I'm sure that the chairman would, as well, to get hold of the name of the individual who called you at your home, upon request——

Ms. PAGNUM. That's fine. I have it.

Mr. TATE [continuing]. And we could followup on that.

Mr. MCINTOSH. I'd like to do that, and we've got some investigative staff who will be in touch with you, and we'll track it down back at the agency.

Ms. PAGNUM. Good, fine, thank you.

Mr. MCINTOSH. Thank you very much.

Our next person who signed up is Curt Anderson. Curt, are you here?

Mr. ANDERSON. Mr. Chairman, have you ever seen MSDS sheets?

Mr. MCINTOSH. Yes; I have, actually.

Mr. TATE. I don't recall if I have or not. They sure have been referenced a lot. I may have seen it at one of the businesses. No, it wasn't that big.

Mr. MCINTOSH. Is this for your business, Mr. Anderson?

Mr. ANDERSON. This is for our business alone. There is, in addition to that, the refrigeration regulations relative to recordkeeping on CFC's and HCFC's. So I'd like to request that you read those on the airplane back to Washington, DC.

Mr. MCINTOSH. You want to keep me awake, don't you?

Mr. ANDERSON. I brought these specifically for you, and I'd like to have you take them back and give them to some of the people who write the regulations.

Mr. MCINTOSH. Thank you.

Mr. ANDERSON. Those are also three letters. One of them is concerning fall protection, one is concerning MSDS sheets, one is concerning recordkeeping for chlorofluorocarbons, the refrigerant that's been regulated now in the Montreal Protocol.

We're a small business. The letters have a bunch of signatures from our employees, as well as myself, because they are painfully conscious of the regulations and the cost to enforce them, and they like their jobs. We have a good safety record.

In the construction industry—and we're a heating and air conditioning contractor, and we do service work as well—but to put it into perspective a little bit, each year there are approximately 1,300 deaths in construction, nationwide. That's about 3 percent of the number of people killed in traffic accidents in the country. So considering the fact that construction is an industry where there is a lot of lifting, a lot of heavy substances, there is a lot of digging, there are a lot of open pits, there are walls, and the workplace is changing from day to day, each day when you go to the workplace, it's different than it was the day before because there's a new floor added, there's something else that's been done, there's new electrical wiring put in and so on. Nobody likes an unsafe workplace, nobody likes to see someone injured. But if you look through our MSDS sheets, most of them are a disgrace to the tree that was cut down to write them on the paper. There are better ways.

At construction sites, we have that many different substances that we use. Maybe one substance is used only once every 6 months by one individual. Maybe it's a welding rod. Maybe it's a piece of sheet metal. The industries earlier today cited such dangerous things as hand soap and Joy and Tide and so on that you have to have sheets on if you're to be in that kind of business. The cost benefit of these sheets, most people that work in the workplace never, ever see them.

Mr. MCINTOSH. I was going to ask you, how many of your employees know where they're kept?

Mr. ANDERSON. We had a company meeting last Friday morning. And I asked that, and out of about 45 people, there were about 6 that raised their hands, and they know where they're kept. We have identified where they're kept, and probably about 6. And whoever has put them to use, I'm not sure anybody has ever put them to use.

Second, just on the fall protection angle a little bit, and I'm not aware that the 6-foot regulation has been changed for our industry. It may have. If it has, I'm not sure of that. You probably faced more hazards getting here today than you did working on a 6-foot-high platform where it is required to have a full body harness on. If you drive on a two-lane road and you meet somebody going at 40 miles an hour each way, even 20 miles an hour each way, you face much more than that.

The irony of this is that most of the people in the construction work force are proud people with training, they know what they're doing, may even know what they're doing when they come, and then there's additional training. But part of the thing that all the regulations assume is that a bureaucrat is smarter than the people that work for me. And I don't believe that for a minute. I don't believe they're smarter. If you take the average bureaucrat and my average worker, I do not believe the bureaucrat is smarter.

Mr. MCINTOSH. My experience is that's probably right.

Mr. ANDERSON. But they're the ones who have the pen. They're the ones who have the pen. And so, these people, then, they don't like the regulations. They go out on a weekend, they snow ski, they drag race, they skydive, some bungee jump. Yet, Monday morning, if I put them on a platform that's as high as the top of that chalk-

board, they've got to have a full body harness, and they scoff at it, as was pointed out earlier.

The other issue that I refer to in the third letter is the recordkeeping on CFC's. This has to do with the Montreal protocol several years ago where some feel that the ozone layer is being damaged, so there are very stringent regulations and taxes on the chlorofluorocarbon refrigerants. And also the recordkeeping on the hydrochlorofluorocarbons, HCFC's, which is one-twentieth, 5 percent, of the chlorine content of the others. The regulations are about a half-inch thick, and they're in the bottom of that, along with the MSDS sheets. And it's long and arduous training for compliance.

We have to buy new equipment. We've estimated it costs us about $5 to $6,000 per employee for the training, the equipment, the machines, educating the public, and all the things that go with that, and with very little, if any, benefit from it.

I don't have any horror stories, except one. I received a memo yesterday that said that it costs about $4,000 per citizen for all the regulations on business. To me, that's a gigantic horror story. There are better ways for each person to spend the $4,000 for the lack of safety or lack of protection that they get from these various regulations.

Frankly, it's easy on this side of the road to get discouraged, and I'm sure it's easy for you to get discouraged. I'm sure you'd like to not be where you are this morning. But I wonder what will happen. When you go back and when you take these back, I'm not sure what the next step is. I've been to several hearings. I'm sure you two have an interest in this and will do something, but something really has to happen to just get rid of some of the regulations. There are good ones, there are some that are so-so, and, frankly, there are some that are just plain stupid. And somebody has to authorize and enforce getting rid of the ones that just don't make any sense if we're to survive and thrive as a country.

Mr. MCINTOSH. I couldn't agree with you more. I will take these back and look at them. I won't guarantee I'll read through all the MSDS——

Mr. ANDERSON. If I were you, I would not.

Mr. MCINTOSH. But Mr. Anderson, we're very close to getting to the point where you were talking about having authorization to go back and get rid of those stupid regulations, sort out so that we can keep and strengthen the good ones that give us a clean environment, a safe workplace and a healthier living place, and get rid of the ones that are stupid and don't make sense. Unfortunately, I think it's going to take another mandate next year from the people in order to get to that because we've run into roadblocks in Washington. Now, Randy and I are going to continue fighting for it and do everything we can, but it's going to take another mandate from the people, one more, and then I think we'll have enough to get it, because we are really that close to getting to that point.

Mr. ANDERSON. The closer you get to that point by November, the more allies you will have there with you in November, and I believe that.

I was in Washington, DC, approximately a year ago, and it was shortly after some new OSHA regulations had come out. I noticed

a Capitol architect had a van load of people driving down the street with guys hanging off the side with no protection, breaking the Federal laws right there in the heart of bureaucratic-dome.

Mr. MCINTOSH. That's one thing we have changed. And in fact, we're starting to get OSHA inspections in our offices now.

Mr. ANDERSON. And the guy mowing the lawn didn't have on shoes that were prescribed to do that kind of work. I appreciate the law that you passed that said whatever is good for the working people in the country is good for Congress as well.

I don't imply that you're not a working person. I'm a little bit bothered by the implication sometimes that a businessowner is not a working person. I don't get there till 6 a.m., and I don't leave before 6 p.m. at night, so maybe I'm not a working person.

But there are two sides to the coin, and you need to look at both sides and act accordingly, and you'll be back in November, I believe that.

Mr. MCINTOSH. Thank you. I appreciate your comments. Did you have anything?

Mr. TATE. No; I just appreciate his comments.

The very first day we were there, we passed the law that required Congress to live by the same laws. It's been phased in. We're now under the Fair Labor Standards Act and, as the chairman stated, we'll be under OSHA, and they're going around doing inspections, and I'm sure you'll find many violations in the House that Congress has held for 40 years where they've lived under a different set of laws. We're trying to make sure that we live by the same laws as everybody else. And we're committed to do that in the hopes that maybe when we live under it, we will be able to reform some of these things to make them a little more user-friendly to meet the goals of a safe workplace and a safe environment and clean environment, but have some common sense. So thanks, Curt.

Mr. MCINTOSH. One other person had signed up to come up and talk, and that was Mike Kelly. Is Mike here? Thank you for being so patient.

Mr. KELLY. Thank you, Mr. Chairman and Mr. Tate, for the opportunity to speak this morning. My name is Mike Kelly and I'm the vice president of a small industrial metal finishing firm called Asko Processing. We're in Seattle, and we've been there for 27 years. I've been involved with our operation for 18 years with my father, our founder, and we currently employ about 87 employees, skilled employees, with an annual payroll of over $1 million.

I personally have seen a tremendous growth in our Government regulations from almost every type of agency and every level of Government possible. Someone within our industry took time to prove this point clearly. He tallied over 140 different reports that the metal finishers must complete, Federal, State, and local, by regulators. I now have a person full time who manages our regulatory reporting in our company. There comes a point, I believe, when enough is enough.

The metal finishers are subject to some of the heaviest environmental regulatory oversight in the entire country. About 60 percent of the small business firms in our industry have gone out of business in the last 10 years, yet, metal finishing, such as hard chrome plating, remains an essential part of almost every type of manufac-

turing business. One of the primary reasons for this substantial loss in businesses in our industry is there are now more complex regulations than there is time in a day, a week, and even a year to get a handle on and comply with. I have four specifics I'd like to present today, but we're short of time, so I'll only take up two and then give you two in a position statement.

In 1995, the U.S. EPA issued a set of new regulations dealing with air emissions for our industry. These new regulations were a result of the 1991 Clean Air Act amendments which were set forth in the requirements to comply with based on the law passed by Congress. In the promulgation of this regulation, a new list of targeted chemicals was developed, chrome being included. In case you're not aware, virtually every type of machinery, from your car to the airplanes we fly in, requires chrome-plated hardware to function safely. Our business does many other coatings, but I'll use chrome as the most visual.

We in the Northwest understand the need to control air emissions, especially the ones that are potentially toxic. As a matter of fact, our industry worked together with the PSAPCA, the local air agency, to develop a chrome emissions regulation back in 1990. However, today, we do not agree with the voluminous regulations that EPA has now adopted. And I state voluminous. The Federal document containing this list for our industry is nearly 1 inch thick.

When local air agency engineers reviewed this to determine how they would make changes to their existing regulation, they found it very complex and hard to understand. My point is if an engineer finds it extremely difficult to understand, think what we nonengineer business owners have to do in retaining this document. Well, I can assure you we don't, Mr. Chairman. Even though this is another example of overregulation, there is some still good news. I've seen our efforts to deal with this locally by the engineers at PSAPCA, along with the work task force, to develop a regulation to meet this Federal standard. We have worked hard to develop a more condensed and understandable, plain English document. This document, if approved by the EPA region 10, will be less than 3 pages long. I've included a copy of that for your information.

I might add that the agency currently is working with four other agencies nationally in a process that regulatory agencies have available to them called the 112–L Delegation Process. This, by itself, is rather tedious and long, and our hope is we, as small businessmen, along with our local agency here in the State, will find success in this substitute or, should I say, equivalent environmental benefit regulation.

The question still remains, however, why does any Federal Government agency need to write rules that are so complex that even specialized engineers have difficulty understanding them, yet we in small business are expected to comply with these and thousands of other overly complex regulations from accounting practices to worker discrimination laws?

I have another example that relates directly to our industry. EPA has been working to develop a new Clean Air Act national effluent guideline called the Metal Products and Machinery Effluent Guideline. This is a rule that will affect the very heart of the remaining,

yet diminished, industrial manufacturing base in 15 different heavy and light industrial categories, all of which manufacture products containing metals. The EPA has divided this effort into two phases. In the first phase, seven specific categories were treated. EPA is moving forward with this rule, despite the fact that virtually all facilities in these industries are already regulated by either local limitations or other national standards.

Mr. MCINTOSH. Mr. Kelly.

Mr. KELLY. Yes, sir.

Mr. MCINTOSH. If I could ask you to go ahead and summarize the last of it. The staff is getting nervous that I'm going to miss a plane.

Mr. KELLY. Oh. Well, let me try and do this quickly.

Let me state some facts about the MP&M, and I'll use 1991 census material, which we all have available to us.

The pollution control prevention capital expenditures in our industry alone, metal finishing, were $42 million that year, which is 27.5 percent of our total capital expenditures. Those are big numbers. And all capital expenditures for this particular cost of regulatory was over 5.77 percent of our gross sales. That's a big number. So please take time to read my statement on this particular issue, in my whole report I've given you.

[The prepared statement of Mr. Kelly follows:]

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APRIL 2, 1996

TO: THE HONORABLE DAVID MCINTOSH
CHARIMAN, SUBCOMMITTEE ON GOVERNMENT REFORM

FROM: MR. MIKE KELLY
VICE PRESIDENT, ASKO PROCESSING INC.

TESTIMONY FOR APRIL 2, 1996
CONGRESSIONAL HEARING
ON GOVERNMENT REGULATORY REFORM

THANK YOU MR. CHAIRMAN FOR THIS OPPORTUNITY TO SPEAK, MY NAME IS MIKE KELLY AND I AM THE VICE PRESIDENT OF SMALL INDUSTRIAL METAL FINISHING BUSINESS CALLED ASKO PROCESSING, THAT HAS BEEN IN SEATTLE FOR 27 YEARS. I HAVE BEEN INVOLVED IN THE OPERATION ALONG WITH MY FATHER, (OUR FOUNDER) FOR THE PAST 18 YEARS. WE CURRENTLY EMPLOY 87 SKILLED PEOPLE WITH A ANNUAL PAYROLL IN EXCESS OF 1 MILLION DOLLARS.

I PERSONALLY HAVE SEEN A TREMENDOUS GROWTH IN GOVERNMENT REGULATIONS FROM ALMOST EVERY TYPE OF AGENCY FROM EVERY LEVEL OF GOVERNMENT POSSIBLE. SOMEONE WITH IN OUR INDUSTRY TOOK THE TIME TO PROVE THIS POINT CLEARLY, HE TALLIED A POSSIBLE 140 DIFFERENT REPORTS THAT METAL FINISHERS MUST COMPLETE FOR FEDERAL, STATE AND LOCAL REGULATORS. I NOW HAVE A PERSON FULLTIME WHO MANAGES OUR REGULATORY REPORTING. THERE COMES A POINT I BELIEVE WHEN ENOUGH IS ENOUGH! METAL FINISHERS ARE SUBJECT TO SOME OF THE HEAVIEST ENVIRONMENTAL REGULATORY OVERSIGHT OF ANY INDUSTRY. ABOUT 60% OF THE SMALL FIRMS IN OUR INDUSTRY HAVE GONE OUT OF BUSINESS IN THE LAST 10 YEARS. YET, METAL FINISHING SUCH AS HARD CHROME PLATING REMAIN AN ESSENTIAL PART OF ALMOST EVERY TYPE OF MANUFACTURING BUSINESS. ONE OF THE PRIMARY REASONS FOR THIS SUBSTANTAIL LOSS IN BUSINESSES IN OUR INDUSTRY IS THERE ARE NOW FAR MORE COMPLEXED GOVERNMENT REGULATIONS THAN TIME IN A DAY, WEEK, OR YEAR FOR SMALL BUSINESS OWNERS TO KNOW ALL OF THEM AND HOW TO COMPLY WITH THEM.

I HAVE FOUR SPECIFIC CONCERNS I WOULD LIKE TO PRESENT TO THE COMMITTEE, TWO OF WHICH I WILL DISCUSS IN MY REMARKS THE OTHERS I WILL LEAVE YOU WITH POSITION STATEMENTS.

IN 1995 US EPA ISSUED A SET OF NEW REGULATIONS DEALING WITH AIR EMISSIONS FOR MY INDUSTRY. THESE NEW REGULATIONS WERE THE RESULT OF THE 1991 CLEAN AIR ACT AMENDMENTS WHICH SET

FORTH REQUIREMENTS FOR US TO COMPLY WITH BASED ON THE LAW PASSED BY CONGRESS.

IN THE PROMULGATION OF THIS REGULATION A NEW LIST OF TARGETED CHEMICALS WAS DEVELOPED, CHROME BEING INCLUDED. IN CASE YOUR NOT AWARE, VIRTUALLY EVERY TYPE OF MACHINERY FROM YOUR CAR TO AIRPLANES REQUIRE CHROME PLATED HARDWARE TO FUNCTION SAFELY. OUR BUSINESS DOES MANY OTHER COATINGS, BUT CHROME IS BY FAR THE MOST VISIBLE.

WE IN THE NORTHWEST UNDERSTAND THE NEED TO CONTROL AIR EMISSIONS, ESPECIALLY ONES THAT ARE POTENTIALLY TOXIC. AS A MATTER OF FACT OUR INDUSTRY WORKED TOGETHER WITH PSAPCA OUR LOCAL AIR AGENCY TO DEVELOP CHROME EMISSION REGULATIONS BACK IN 1990. HOWEVER, WE DO NOT AGREE WITH THE VOLUMINOUS REGULATION THAT EPA HAS NOW ADOPTED.

THE FEDERAL DOCUMENT CONTAINING THIS LIST OF NESHAP'S AS IT IS TITLED FOR OUR INDUSTRY IS NEARLY 1 INCH THICK. WHEN LOCAL AIR AGENCY ENGINEERS REVIEWED THIS TO DETERMINE HOW THEY WOULD MAKE CHANGES TO THEIR EXISTING REGULATION, THEY FOUND IT VERY COMPLEX AND HARD TO UNDERSTAND. MY POINT IS, IF A ENGINEER FINDS THIS EXTREMELY DIFFICULT TO UNDERSTAND, THINK WHAT WE NON ENGINEER BUSINESS OWNERS RETAIN FROM THIS DOCUMENT, NOT MUCH I ASSURE YOU.

MR. CHAIRMAN, EVEN THOUGH THIS IS ANOTHER EXAMPLE OF OVER REGULATION THERE IS SOME GOOD THAT I SEE IN OUR EFFORTS TO DEAL WITH THIS LOCALLY. THE ENGINEERS AT PSAPCA ALONG WITH A TASK GROUP OF REPRESENTATIVES OF OUR INDUSTRY HAVE BEEN WORKING TO DEVELOP A REGULATION WHICH WILL MEET THE FEDERAL REQUIREMENTS AND YET BE MUCH MORE CONDENSED AND UNDERSTANDABLE IN PLAIN ENGLISH. THIS DOCUMENT IF APPROVED BY THE EPA REGION 10, WILL BE LESS THAN 3 PAGES LONG. THE QUESTION STILL REMAINS HOWEVER, WHY DOES ANY FEDERAL GOVERNMENT AGENCY NEED TO WRITE RULES THAT ARE SO COMPLEX THAT EVEN SPECIALIZED ENGINEERS HAVE DIFFICULTY UNDERSTANDING THEM, YET WE IN SMALL BUSINESS ARE EXPECTED TO COMPLY WITH THESE AND THOUSANDS OF OTHER OVERLY COMPLEX REGULATIONS FROM ACCOUNTING PRACTICES TO WORKER DISCRIMINATION LAWS.

I HAVE ANOTHER EXAMPLE THAT RELATES DIRECTLY TO OUR INDUSTRY. EPA HAS BEEN WORKING ON DEVELOPMENT OF A NEW CLEAN WATER ACT NATIONAL EFFLUENT GUIDELINE CALLED THE METAL PRODUCTS AND MACHINERY EFFLUENT GUIDELINE. THIS IS A RULE THAT WILL EFFECT THE VERY HEART OR OUR REMAINING YET DIMINISHED INDUSTRIAL MANUFACTURING BASE IN 15 DIFFERENT HEAVY AND LIGHT INDUSTRIAL CATAGORIES, ALL OF WHICH MANUFACTURE PRODUCTS USING METALS. EPA HAS DIVIDED THIS EFFORT ONTO TWO PHASES. IN THE FIRST PHASE, 7 SPECIFIC CATAGORIES WERE TARGETED.

EPA IS MOVING FORWARD WITH THIS RULE DESPITE THE FACT THAT VIRTUALLY ALL FACILITIES IN THESE INDUSTRIES ARE ALREADY REGULATED BY EITHER LOCAL LIMITATIONS OR OTHER NATIONAL STANDARDS, AND DESPITE THE FACT THAT EPA'S CO-REGULATORS, PUBLICLY OWNED TREATMENT WORKS (POTW) INDICATED IN THEIR COMMENTS TO EPA LAST FALL THAT THE ENVIRONMENTAL BENEFITS WILL BE MINIMAL IN COMPARISON TO THE COSTS OF THIS RULE.

MANY OF THE FACILITIES THAT WILL BE REGULATED UNDER THE MP&M

PROPOSAL ARE SMALL BUSINESSES THAT ARE GENERALLY ON THE MARGINS OF PROFITABILITY. TAKE THE METAL FINISHING INDUSTRY AS AN EXAMPLE. THE U.S. CENSUS BUREAU REPORTS THAT IN 1991 PLATING OPERATIONS SPENT $42 MILLION IN POLLUTION CONTROL AND PREVENTION CAPITAL EXPENDITURES, ROUGHLY 27.5 PERCENT OF THEIR TOTAL CAPITAL EXPENDITURES. FURTHER, TOTAL POLLUTION CONTROL EXPENDITURES, INCLUDING OPERATIONS AND CAPITAL, WERE $218 MILLION IN 1991, EQUALING 5.77 PERCENT OF SALES AND 8.81 PERCENT OF VALUE ADDED. AND I ASSURE THESE NUBERS ARE HIGHER TODAY.

TO ACHIEVE WASTEWATER PRETREATMENT UNDER CURRENT REGULATION, FACILITIES GENERALLY EMPLOY BEST AVAILABLE TECHNOLOGIES. THE MAJOR OPERATING COSTS FOR CONVENTIONAL TREATMENT ARE LABOR, TREATMENT REAGENTS, AND SLUDGE DISPOSAL. BEST AVAILABLE TECHNOLOGY RESULTS IN GENERATION OF METAL BEARING SLUDGE, ONLY 20 PERCENT OF WHICH IS NOW BEING RECYCLED. THE AVERAGE COST FOR SLUDGE DISPOSAL APPROACHES $84,000 PER YEAR, NOT INCLUDING LABOR COSTS. CURRENTLY, APPROXIMATELY HALF OF THE OPERATING COSTS FOR CONVENTIONAL WASTEWATER TREATMENT ARE ATTRIBUTED TO LABOR, AND SOME FACILITIES REPORT SPENDING MORE THAN 10,000 LABOR HOURS PER YEAR ON TREATMENT.

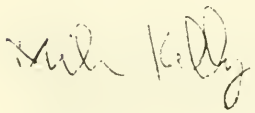
BECAUSE EPA VIEWS DEVELOPMENT OF THIS GUIDELINE AS AN INFLEXIBLE MANDATE, INDUSTRY SPENT HUNDREDS OF THOUSANDS OF DOLLARS LAST YEAR JUST TO RESPOND TO THIS PROPOSED RULE. WHAT DID WE FIND FOR ALL THIS EXPENSE? - A DATA BASE OF NO MORE THAN 13 SAMPLING VISITS FOR MANY POLLUTANTS DESIGNED TO REGULATE A CRITICAL AND DIVERSE INDUSTRIAL SEGMENT. IN ADDITION, THE RESULT OF EPA'S LIMITED ANALYSIS WAS SIMPLY NOT SUPPORTED BY SCIENCE AND EVERYDAY EXPERIENCE IN MANY FACILITIES ALREADY COMPLYING WITH WATER LIMITATIONS. THE PROCESS STILL GOES ON HOWEVER. INDUSTRY CAN EXPECT ANOTHER TWO OR THREE YEARS OF THIS BATTLE AND THAN THE COST TO COMPLY WITH WHATEVER RESULTS IN THE FINAL RULE. ALL FOR AN INDUSTRY THE POTWS DON'T THINK ARE A PROBLEM.

THIS TREND IN OVER REGULATION MUST BE REVERSED. REGULATIONS ON TOP OF REGULATIONS ARE NOT HELPING US COMPETE IN THIS GLOBAL ECONOMY. CONGRESS MUST CONTINUE TO GIVE OUR GOVERNMENT AGENCIES NEW DIRECTION. AS A MEMBER THE AESF (AMERICAN ELECTROPLATERS AND SURFACE FINISHERS SOCIETY, AND OF THE NAMF OUR NATIONAL TRADE ASSOCIATION, WE HAVE WORKED HARD TO MAKE OUR MASSAGE KNOWN THAT COMPLEX OVER BEARING FEDERAL REGULATIONS ARE NOT THE ANSWER.

THERE ARE REAL BENEFITS FOR DECENTRALIZATION OF REGULATORY REQUIREMENTS FOR BOTH EFFICIENCY AND ENVIRONMENTAL PROTECTION. WE SHOULD TAKE NOTE THAT IT IS THE STATES WHO ARE THE LABORATORY FOR GOOD SOUND ENVIRONMENTAL POLICY SUCH AS WASHINGTON STATE MEETING ITS ENVIRONMENTAL NEEDS WITH REGULATIONS THAT ARE UNDERSTANDABLE AND ACHIEVEABLE.

I HAVE ADDITIONAL AREAS OF CONCERN BUT KNOW MY TIME IS SHORT. THERE ARE MANY PROBLEMS WITH THE SUPERFUND LAW THAT HAVE DRAMATICALLY EFFECTED SMALL BUSINESS. I'VE ENCLOSED A POSITION STATEMENT. LASTLY THE COMMON SENSE INITIATIVE, I HAVE INCLUDED PART OF A RESEARCH PAPER ON THE BURDEN OF REPORTING THAT METAL FINISHING INDUSTRY DEALS WITH TODAY. I AM CERTIN THESE POINTS WILL BE INFORMATIVE FOR THE COMMITTEE AS WELL.

IN CLOSING MR. CHAIRMAN, I WOULD LIKE TO THANK YOU FOR THIS OPPORTUNITY TO COME BEFORE THE COMMITTEE AND FOCUS ON THE MAJOR PROBLEM IN FEDERAL REGULATION - REGULATIONS THAT ARE TOO COMPLEX FOR MOST PEOPLE TO UNDERSTAND AND IN SOME CASES ARE EVEN UNNECESSARY. I AM HOPEFUL THAT MY REMARKS WITH THOSE OF OTHERS WILL ASSIST THE COMMITTEE IN MAKING MAJOR STRIDES IN IMPROVING THIS SITUATION, AS SOON AS POSSIBLE.



National Association of Metal Finishers

Surface Finishing Industry Issue Update:

Superfund Reform

Issues

The surface finishing industry has found itself liable for Superfund cleanups and the staggering associated costs. The industry has been trapped in the endless litigation to determine who is responsible under the law. In addition to cleanups initiated at metal finishing sites, many of which had been used for various industrial activities over several generations, numerous finishing firms have been named as potentially responsible parties (PRPs) in Superfund cleanups at industrial and municipal disposal sites.

These potential liabilities and the expensive legal battles over who should pay for environmental remediation have severely strained the financial resources of the typical small operation in the surface finishing industry, potentially resulting in bankruptcy. The mere threat of liability can end longstanding banking relationships.

The industry faces two fundamental problems with Superfund liability: retroactive joint and several liability and the information used to determine PRP status. First, many of the activities that result in PRP status stem from formerly accepted, and in fact mandated, waste handling and disposal practices. Second, small operations are often pulled into Superfund by EPA or large PRPs based on extremely dubious evidence, often provided by hearsay and other unreliable sources. Unlike larger companies, our members have neither ready information nor the resources to refute assertions of liability.

NAMF provided testimony last October to the House Small Business Committee regarding Superfund *de minimis* settlements. Despite some member companies qualifying as *de minimis* contributors (responsible for less than one percent of the total volume of hazardous waste) eligible for expedited settlement, the costs can be enormous. With cost of the average site totaling $25-30 million, the cost of a *de minimis* settlement could be as much as $300,000, before the addition of a premium for contribution protection.

Congress must complete comprehensive revisions to the current Superfund law by repealing retroactive liability at multi-party sites prior to 1987 and establishing realistic, risk-based clean-up standards. Real reform of Superfund can only be achieved by focusing all resources on cleanups, not disputes over liability.

Action

We urge Congress to consider legislation to comprehensively reform Superfund. The following are the principles that we recommend for Superfund reform.

- elimination of retroactive joint and several liability for waste disposal prior to 1987, and creation of a proportional liability system for disposal which occurred after 1986
- elimination of liability for innocent landowners
- establishment of reasonable rules and limits on natural damages
- infusion of cost/benefit, risk prioritization and site-specific risk assessment concepts into remedy selection and resource allocation decisions
- creation of budgetary and management discipline for EPA's administration of Superfund.
- capping and reviewing the existing NPL
- greatly enhancing the role of the states under the federal Superfund program and providing incentives to the states to adopt similar reforms for non-federal sites
- redirection of all Superfund taxes to actual Superfund clean-up activities to obviate the need for increased funding
- creation of a fairer and more efficient funding mechanism for the reformed program without raising existing tax burdens on the economy

We urge Congress to support H.R. 2500 with appropriate amendments proposed by Commerce Committee Chairman Bliley, including eliminating liability for waste generators and transporters prior to 1987 and creating proportional liability for site owners and operators and post-1987 waste.

Conclusion

NAMF is an active participant in the current Superfund debate, and is a member of the SUPERFUND REFORM '95 coalition. For more information, please contact any member of the surface finishing industry or our Washington Government Relations office at (202) 965-5190.

February 1996

To: J. Kelly Mowry @ 9-1-713-224-9256 @ dcfax
CC:
BCC:
From: Mindy Gampel @ EPA
Date: 03/13/96 08:30:37 AM
Subject: Since you gave your copy away I thought that you might like another one. - M

Common Sense Initiative for Metal Finishing
The RIITE Project

Need For Change The Existing Paperwork Process:

- The metal finishing industry is mainly composed of small businesses with less than 20 employees;
- Metal finishers are subject to some of the heaviest environmental regulatory oversight of any small business sector;
- There are 140 possible reports that metal finishers must complete for Federal, State, and local regulators;
- The industry generates a large quantity of hazardous waste and is a large user of water which are concerns of community groups, and that must be reported;
- Access to environmental data by metal finishers and NGOs is difficult under the current system.

Under the Common Sense Initiative for Metal Finishing, the USEPA, Texas, and Arizona have teamed up to launch the Regulatory Information Inventory Team Evaluation (RIITE) to seek changes within the current information system.

Goals Of RIITE:

- Reduce the amount of paperwork generated by metal finishers;
- Better the understanding of regulatory requirements among metal finishers, regulatory agencies, and NGOs;
- Improve the flow of information between metal finishers and regulators; and
- Increase the access to environmental data by community groups and metal finishers.

In order to achieve the goals of RIITE, the group is using Business Process Reengineering (BPR). This method has been used with great success by numerous corporations and the Department of Defense to reinvent their information systems. BPR takes a bottom-up look at what information is needed, how it is produced, what is the information flow, and who receives it .

Stakeholders In The Process:

Code	Topic/Matrix	Report/Form Name	Form Description	Form Originator					Provider	Recipient
				EPA	State	County	POTW	Indust		
h034	hazardous waste	Waste Minimization Report - Instructions and Forms	Hazardous Waste Report		TX				State	Metal Finisher
h035	hazardous waste	One-time Shipment Request for Texas Waste Code ...	Hazardous Waste Report		TX				State	Metal Finisher
h036	hazardous waste	Hazardous or Industrial Waste Management Units Form	Hazardous Waste Report		TX				State	Metal Finisher
h037	hazardous waste	Initial Notification Pack. for Haz. or Industrial Waste Managment	Hazardous Waste Report		TX				State	Metal Finisher
h038	hazardous waste	Waste Shipment Summary	Hazardous Waste Report		TX				State	Metal Finisher
h039	hazardous waste	Industrial & Hazardous Waste Annual Waste Summary	Hazardous Waste Report		TX				State	Metal Finisher
h040	hazardous waste	Permit Appl. for a Haz. Waste Storage/Process./Dispos. Facility	Haz. Waste Permit Appl		TX				State	Metal Finisher
w001	water	Self Monitoring Report Form	Water Report		AZ				Metal Finisher	State
w002	water	Water Quality Division Annual Registration Fee Invoice	Water Permit Application		AZ				Metal Finisher	State
w003	water	Industrial Discharge Permit Annual Registration Fee Invoice	Water Permit Application		AZ				Metal Finisher	State
w004	water	Aquifer Protection Permit Application	Water Permit Application		AZ				Metal Finisher	State
w005	water	Aquifer Protection Permit Application (Part I)	Water Permit Application		AZ				State	Metal Finisher
w006	water	Aquifer Protection Permit Application (Part II)	Water Permit Application		AZ				State	Metal Finisher
w007	water	Draft Aquifer Protection Permit	Water Permit		AZ				State	Metal Finisher
w008	water	Aquifer Protection Permit	Water Permit		AZ				State	Metal Finisher
w012	water	Wastewater Discharge Questionnaire	Water Permit Application				AZ		Metal Finisher	POTW
w014	water	Industrial Wastewater Service Batch Discharge Log	Water Report				TX		Metal Finisher	POTW
w015	water	Survey of Grouped and Surface Water Use ...	Water Report		TX				State	Metal Finisher
w016	water	Dry Well Registration	Water Permit Application		AZ				State	Metal Finisher
w017	water	Aquifer Protection Permit Deter. of Applicability for Dry Wells	Water Permit Application		AZ				State	Metal Finisher
w018	water	Application for Reclaimed Wastewater Reuse Permit	Water Permit Application		AZ				State	Metal Finisher
w019	water	Aquifer Protection Permit for Clean Closure	Water Permit Application		AZ				State	Metal Finisher
w020	water	Aquifer Protection Permit Determination of Applicability	Water Permit Application		AZ				State	Metal Finisher
w022	water	Total Toxic Organic Response Form ("TOMP")	Water Permit Application				AZ		POTW	Metal Finisher
w023	water	Total Toxic Organic Response Form ("TOMP")	Water Permit Application				AZ		Metal Finisher	POTW
w024	water	Toxic Organic Management Plan (TOMP)	Water Permit Application				AZ		POTW	Metal Finisher
w026	water	Wastewater Survey for Nonresidential Establishments ...	Water Permit Application				TX		POTW	Metal Finisher
w027	water	Industrial Waste Discharge Permit	Water Permit				TX		POTW	Metal Finisher
w028	water	Quarterly Self Monitoring Report	Water Report				TX		POTW	Metal Finisher
w029	water	Laboratory Services Division Chain of Custody Form	Water Data				TX		POTW	Metal Finisher
w030	water	Significant Industrial User Monitoring Report Form	Water Report				AZ		POTW	Metal Finisher
w031	water	Slug Control Plan (SCP)	Water Permit Application				AZ		POTW	Metal Finisher
w032	water	Class "A" Wastewater Discharge Permit	Water Permit				AZ		POTW	Metal Finisher
w033	water	Industrial Wastewater Permit Application	Water Permit Application				AZ		POTW	Metal Finisher
a001	emergency plan	Contingency Plan for Hazardous Waste Emergencies	Emergency Plan					AZ	Metal Finisher	EPA
a002	emergency plan	Fire Department Response Plan	Emergency Plan					AZ	Metal Finisher	Fire Department
a003	emergency plan	Draft Nabas. Resp. Texas Integrat. Contin. Plan Guide. (1/96)	Emergency Plan Guidance	X					EPA	Metal Finisher
a004	emergency plan	Draft Integrated Contingency Plan Elements (11/95)	Emergency Plan Guidance	X					EPA	Metal Finisher

NOTE: GAPS IN THE CODES REFLECT THOSE REPORTS/FORMS THAT ARE NOT APPLICABLE TO THIS EXERCISE. X003 AND X004 WERE NOT INCLUDED IN THE FINAL REPORT

Metal Finishing Industry Reporting Requirements

Code	Topic/Matrix	Report/Form Name	Form Description	Form Orginator					Provider	Recipient
				EPA	State	County	POTW	Indust.		
a001	air	Authority to Operate	Air Permit			AZ			County	Metal Finisher
a002	air	Invoice for Air Pollution Control	Air Permit Application			AZ			Metal Finisher	County
a003	air	Air Pollution Equipment Installation Permit	Air Permit			AZ			County	Metal Finisher
a005	air	Emission Data Certification and Fee Calculation	Air Permit Application			AZ			Metal Finisher	County
a006	air	Form A: Emissions From Use of Organic Compounds	Air Permit Application			AZ			Metal Finisher	County
a011	air	Form F: Control Equipment Information	Air Permit Application			AZ			Metal Finisher	County
a012	air	General Process Form	Air Permit Application			AZ			County	Metal Finisher
a019	air	Form F: Stack Information	Air Permit Application			AZ			County	Metal Finisher
a021	air	Standard Permit Application Form	Air Permit Application			AZ			County	Metal Finisher
a022	air	Application for Air Quality Permit - Non Title (multi-forms)	Air Permit Application			AZ			County	Metal Finisher
a023	air	Initial Notification Report - Chromium Emissions	Air Report			AZ			Metal Finisher	County
a024	air	Notification of Construction/Reconstruction - Chrom. Emission	Air Report			AZ			Metal Finisher	County
a025	air	Initial Notif. Rpt for Existing Machines - Halogenated Cleaners	Air Report			AZ			Metal Finisher	County
a026	air	Initial Notif. Report for New Machines - Halogenated Cleaners	Air Report			AZ			Metal Finisher	County
a027	air	Chromium Plating Facilities Section II Permit Application(multi-forms	Air Permit Application		TX				State	Metal Finisher
a028	air	Metal Spraying Section II Permit Application (multi-forms)	Air Permit Application		TX				State	Metal Finisher
a029	air	Hot Dip Galvanizing Section II Permit Application (multi-forms)	Air Permit Application		TX				State	Metal Finisher
h001	hazardous waste	Notification of Regulated Waste Activity (Appl. for RCRA ID)	Hazardous Waste Report	X					Metal Finisher	EPA
h002	hazardous waste	Hazardous Waste Generation Fee Invoice	Haz. Waste Permit Appl.		AZ				Metal Finisher	State
h004	hazardous waste	Haz. Waste Facility Annual Report, and Ann. Regist. Fee Invoice	Haz. Waste Permit Appl.		AZ				Metal Finisher	State
h008	hazardous waste	Material Safety Data Sheet	Hazardous Waste Data					AZ	Chemical Supplier	Metal Finisher
h009	hazardous waste	Form R: Toxic Chemical Release Inventory	Hazardous Waste Report	X					Metal Finisher	State
h011	hazardous waste	Land Disposal Notification (Disposal Company)	Hazardous Waste Report					AZ	Metal Finisher	Disposal Company
h012	hazardous waste	Land Disposal Notification (Disposal Company)	Hazardous Waste Report					TX	Metal Finisher	Disposal Company
h013	hazardous waste	Waste Profile Sheet (Disposal Company)	Hazardous Waste Data					AZ	Metal Finisher	Disposal Company
h014	hazardous waste	Waste Log	Hazardous Waste Data					AZ	Metal Finisher	Metal Finisher
h015	hazardous waste	Uniform Hazardous Waste Manifest	Hazardous Waste Report		MN				Metal Finisher	State
h017	hazardous waste	Uniform Hazardous Waste Manifest	Hazardous Waste Report		TX				State	Metal Finisher
h018	hazardous waste	METCO Manifest Log	Hazardous Waste Report					AZ	Metal Finisher	Metal Finisher
h019	hazardous waste	Pollution Prevention Plan - Part II	Hazardous Waste Report		AZ				Metal Finisher	State
h020	hazardous waste	Annual Pollution Prevention Plan Progress Report	Hazardous Waste Report		AZ				Metal Finisher	State
h023	hazardous waste	Annual Hazardous Waste Report Forms (IC,GM,WR,PS,OI)	Hazardous Waste Report	X					Metal Finisher	State
h024	hazardous waste	Annual Hazardous Waste Report ("FAR") - for LQGs and Forms	Hazardous Waste Report	X					State	Metal Finisher
h025	hazardous waste	Annual Waste Summary	Hazardous Waste Report		TX				Metal Finisher	State
h027	hazardous waste	Semiannual Report as Continued Compliance	Hazardous Waste Report				TX		Metal Finisher	POTW
h028	hazardous waste	Survey of Pollution Abatement Costs and Expenditures	Hazardous Waste Report	X*					Metal Finisher	* Dept. Commerce
h029	hazardous waste	Hazardous or Industrial Waste Stream Notification Form	Hazardous Waste Report		TX				Metal Finisher	State
h030	hazardous waste	Source Reduction and Waste Minimization Plan Annual Report	Hazardous Waste Report		TX				Metal Finisher	State
h031	hazardous waste	Tier Two Reporting ... Right-To-Know Laws ...	Hazardous Waste Report		TX				Metal Finisher	State
h032	hazardous waste	Hazardous Waste Manifest Resubmittal Fee Invoice	Haz. Waste Permit Appl.		AZ				State	Metal Finisher
h033	hazardous waste	Facility Ass. Report for Small Quantity Haz. Waste Generators	Hazardous Waste Report		AZ				State	Metal Finisher

National Association
of Metal Finishers

Surface Finishing Industry Update:

Clean Water Act Reauthorization

Issue

Since the early 1980s, metal finishers have been regulated as point source dischargers under the Clean Water Act (CWA) pretreatment program, categorical effluent guidelines, and local standards. Industry members have installed complex, expensive in-house treatment systems for the metals used in the surface finishing processes in order to meet federal and local standards. This investment in environmental protection often represents the largest capital expenditure made by many surface finishing operations in the past ten years.

In many cases, the surface finishing industry has reduced discharges to the limits of scientific detection. Recent EPA reports reflect this progress, stating that less than 15 percent of remaining water quality problems result from industrial discharges. In fact, this program is generally regarded as an environmental success story EPA's findings in its *Report to Congress on the National Pretreatment Program* (July 1991) illustrates that the current EPA-administered program to control industrial toxics is very successful. **Congress should not enact a new Clean Water Act that imposes more stringent requirements on industries already controlled.** The legislative focus should be on the remaining real water quality issues. commercial, residential and non-point discharges of water pollution.

NAMF urges Congress to reauthorize the Clean Water Act this year.

NAMF strongly supports the industrial point source provisions contained in H.R. 961 as passed by the House.

Why NAMF Supports H.R. 961

H.R. 961 Provides Needed Flexibility:

H.R. 961 allows EPA or a State to issue a permit that modifies effluent limitations where EPA or the State determines that the source is undertaking pollution prevention measures that will achieve an overall reduction of emissions to the environment from that source and will result in a *net benefit to the environment.*

These provisions provide the necessary flexibility to allow sources to achieve further reductions in pollution in innovative and cost-effective ways. Absent this flexibility, the statute will require point sources, such as metal finishing facilities, to install increasingly expensive technology that will achieve only marginal improvements in water quality because much of the remaining water pollution is from nonpoint sources.

H.R. 961 Addresses Redundant Pretreatment Requirements:

H.R. 961 allows a publicly owned treatment works (POTW) to require industry to comply with local pretreatment standards in lieu of national categorical pretreatment standards before discharging directly to the POTW only if EPA or the State determines that the POTW is, and will remain, in compliance with its permit, including air emissions and sludge quality requirements.

This provision recognizes that the POTW is a co-regulator with the State and EPA. Prior to the development of national categorical pretreatment standards for large industries and small industries, such as metal finishing companies, POTWs have effectively protected the nation's waters by requiring such industries to comply with local limits. H.R. 961 allows the POTWs to continue in this role even after the development of national categorical standards for an industry if the result will be the avoidance of redundant treatment or the reduction of administrative burden on the POTW.

Discharges from the POTW to the nation's waters will remain the same. Compliance will continue to be assured by the extensive monitoring performed by the POTWs.

H.R. 961 Incorporates Common Sense and Good Science:

H.R. 961 requires major Clean Water Act requirements issued after February 15, 1995 be reviewed. Sections 323 and 324 of the bill would require EPA to certify that only those rules and guidance issued after introduction of the bill costing the public $100 million or more meet sound risk assessment principles and meet a cost/benefit test. EPA has 18 months from enactment to make this certification.

H.R. 961 Addresses the *Real* Remaining Sources of Pollution:

H.R. 961 strengthens the existing Clean Water Act section 319 nonpoint source program by providing, among other things, an unprecedented level of federal financial and technical assistance: $1 billion for state program grants and $2.5 billion for a new state revolving loan fund solely for nonpoint sources. The bill also requires states to develop and implement comprehensive management plans and make reasonable progress toward attainment of water quality standards over, at most, a 15 year time frame. If a state does not have a strong program in place or fails to make reasonable progress toward water quality goals, EPA must develop and implement a program. The bill also increases the amount of section 319 funding available for ground water protection--a key component of managing nonpoint sources.

Conclusion

NAMF is actively involved in the Clean Water Act reauthorization debate through participation in the Clean Water Industry Coalition (CWIC), membership in the EPA's Effluent Guidelines Task Force, and in testimony before the Water Resources and Environment Subcommittee of the Transportation and Infrastructure Committee. Please contact any member of the surface finishing industry or our Washington Government Relations office at (202) 965-5190 for further information.

February 1996

NAMF National Association of Metal Finishers

Surface Finishing Industry Update:

Risk Assessment and Cost/Benefit Analysis

Issues

NAMF supports the use of risk assessment and cost/benefit analysis in environmental statutes and regulations. Environmental policy has drifted toward regulation of insubstantial risk at great societal cost through inattention to the difference between perceived and real risks. As a result, policy often focuses on the latest public scares and simplistic and expensive solutions.

Use of sound risk analysis is increasingly important as environmental policy moves toward further regulation of already controlled pollution sources, such as in the Clean Water Act. The final percentage of control to "zero discharge" can be extremely costly and yield no real environmental or health benefits.

"There are heavy costs involved if society fails to set environmental priorities based on risk. If finite resources are expended on lower-priority problems at the expense of higher-priority risks, then society will face needlessly high risks. If priorities are established based on the greatest opportunities to reduce risk, total risk will be reduced in a more efficient way..."
1990 Report of the Science Advisory Board, Reducing Risk: Setting Priorities and Strategies for Environmental Protection

Congress has the historic opportunity to pass legislation to make government work better. The time is now to ensure that future rules and regulations address real risks in the most cost effective manner.

NAMF urges members of Congress concerned about the appropriateness of environmental, health, and safety regulations to complete action on regulatory reform measures this year.

Action

NAMF urges Congress to complete action on regulatory reform. Congress must move forward to make the regulatory process more transparent and realistic. Any legislation enacted must ensure that federal agencies use sound science and realistic risk assumptions in the development of environmental, health, and safety regulations, and that this information is

conveyed to the public in a meaningful way. Further, this legislation must require agencies to justify the costs of regulations in relation to its benefits.

Major Provisions Supported by NAMF

- Risk assessments and cost/benefit analyses would be part of the administrative record and published in the Federal Register, and thus could be challenged in court under the Administrative Procedures Act.

  Risk characterization and communication using best estimates (rather than worst case scenario), comparative risks, and substitution risks.

- Strengthing the Regulatory Flexibility Act which requires federal agencies to take into account the impact of a regulation on small business. Any regulation subject to the Regulatory Flexibility Act should also be subject to the cost/benefit provisions.

- Rules and regulations should be subject to periodic review. Agencies should be required to set up a schedule for reviewing regulations in order to determine whether those rules should be modified or repealed.

Conclusion

For more information on this issue, please contact an industry member or the industry's Washington Government Relations office at (202) 965-5190.

February 1996

DRAFT

Regulation III, Section 3.01 Chromic Acid and Trivalent Chromium Plating and Chromic Acid Anodizing

(a) **Applicability:** This section applies to chromic acid and trivalent chromium plating tanks and chromic acid anodizing tanks, except tanks issued an Order of Approval under Regulation I, Section 6.07, for exclusive use in research and development of new processes and products.

(b) **Hard Chromic Acid Plating Standards:** It shall be unlawful for a person to cause or allow the operation of a hard chromic acid plating tank unless the tank is equipped with control equipment that limits total chromium emissions to less than the following applicable limit:

Affected Tanks	Emission Limit (mg total chromium/dscm)
Hard Chromic Acid Plating located at a facility with a maximum cumulative potential rectifier capacity of less than 60 million ampere-hour/year and installed prior to Dec. 15, 1993	0.03
Hard Chromic Acid Plating, all others	0.015

(c) **Chromic Acid Decorative Plating and Anodizing Standards:** It shall be unlawful for a person to cause or allow the operation of a decorative chromic acid plating or chromic acid anodizing tank unless total chromium emissions are controlled using either of the following control techniques:

(1) The tank shall be equipped with control equipment that limits total chromium emissions to less than 0.01 milligrams per dry standard cubic meter; or

(2) A mist suppressant shall be employed which reduces the bath surface tension to less than 45 dynes/cm. Bath surface tension must be measured and recorded weekly with a stalagmometer or tensiometer operated and maintained in accordance with manufacturer's specification.

(d) **Operation and Maintenance Requirements:** Chromic acid plating or anodizing tanks using control equipment to comply with the applicable emission limit in Section 3.01(b) or (c) must be operated in accordance with an Order of Approval (Regulation I, Section 6.07) which specifies operating and maintenance procedures, monitoring, recordkeeping and reporting requirements consistent with the federal standards for chromic acid plating and anodizing in 40 CFR Part 63, Subpart N.

(e) **Requirements for Trivalent Chromium Operations:** It shall be unlawful to use a trivalent chromium bath unless the facility maintains records on-site which demonstrates that there is a wetting agent included in the bath solution as purchased.

(f) **Performance Testing Requirements:** It shall be unlawful for a person to cause or allow the operation of a chromic acid plating or anodizing tank using control equipment to comply with the applicable emission limit in 3.01(b) or (c) unless compliance with the emission limit has been demonstrated with an on-site performance test conducted in accordance with 40 CFR Part 63, Subpart N. Test reports documenting results of the performance test shall be maintained on-site. Decorative plating and anodizing operations complying with the applicable surface tension limits are not required to perform this test.

(g) **Operating Permit Requirements:** It shall be unlawful to cause or allow the operation of any chromic acid plating or anodizing tanks without complying with the provisions of WAC 173-401 and any permit issued under its authority. Nonmajor sources may submit a general permit application that includes information necessary to determine qualification for the general permit and to assure compliance with the requirements of this regulation.

(h) **Compliance Schedule:** The requirements in this section shall become effective for existing facilities on the following schedule:

(1) Performance testing as required in 3.01(f) shall be performed no later than July 1, 1997 for all hard chromic acid plating tanks and for chromic acid anodizing tanks complying with emission limits. Chromic acid decorative plating tanks complying with emission limits shall perform testing no later than July 1, 1996.

(2) An operating permit or general permit application as required in 3.01(g) shall be submitted to the Agency no later than 60 days after adoption of this regulation [*date to be inserted after adoption*].

DRAFT

Definitions:

Chromic Acid Anodizing means an electrolytic process by which a metal surface is converted to an oxide surface coating in a solution containing chromic acid.

Decorative Chromic Acid Plating means an electrolytic process by which a layer of chromium equal to or less than 1 micron is deposited on a base material using a solution containing chromic acid. Current density applied is typically less the 2,400 Amperes per square meter and total plating time is typically less than 5 minutes.

Hard Chromic Acid Plating means an electrolytic process by which a layer of chromium greater than 1 micron is deposited on a base material using a solution containing chromic acid. Current density applied is greater than 1,600 Amperes per square meter and total plating time is typically greater than 20 minutes.

Trivalent Chromium Plating means an electrolytic process by which a layer of chromium is deposited on a base material using a trivalent chromium solution.

Conditions for Composite Meshpad Mist Eliminator System

1. The chromic acid hard plating tanks shall not be operated unless all chromium emissions are exhausted through a Composite Mesh-Pad Mist Eliminator System (CMMES). The total chromium emissions from the CMMES shall be less than 0.015 milligram per dry cubic meter as measured by EPA Method 306. *If the operation is an existing facility, the 0.03 milligram per dry cubic meter can be applied if amp-hr/year are limited to 60 million.*

2. The facility shall have an O&M Plan as described in Section 5.05(e) of Regulation I that includes the following:

(a) The acceptable range of compliant pressure drop values across the control device as established by performance testing and measured with a permanently installed manometer. The acceptable range of compliant pressure drop values shall be incorporated into this Order of Approval after submittal of the performance test results.

(b) Procedures for routinely inspecting the control device and ductwork to assure there is proper drainage, no excessive chromic acid buildup in the control device, no evidence of chemical attack on the structural integrity of the system, no breakthrough of chromic acid mist as evidenced with orange residue in the final stages of the system, and no leaks in the system.

3. The following records shall be included in the facility O&M Plan and made available to PSAPCA personnel upon request:

(a) Pressure drop readings across the control device (at least once on each operating day);

(b) Inspection and maintenance performed on the control device, ductwork or monitoring equipment including inspection date and results of the inspection (at least quarterly);

(c) The occurrence, duration and cause of any malfunction of the control equipment or monitoring equipment, and the actions taken to correct any malfunction; and

(d) Identification of each period that the control equipment operates outside the range of compliant pressure drop values, and whether a malfunction occurred during that period.

4. A performance test shall be conducted in accordance with 40 CFR Section 63.344 and PSAPCA Regulation I, Section 3.07(b) by July 24, 1997. A performance test plan shall be submitted to PSAPCA 30 days prior to the source test. During the test, the pressure drop across the CMMES shall be recorded hourly. The final test results shall be submitted to PSAPCA within 60 days of the completion of the test.

PSAPCA Regulation I

SECTION 5.05 GENERAL REQUIREMENTS FOR REGISTRATION

Adopted 03/13/68 (12)
Revised 11/10/71 (155), 12/09/82 (530), 06/09/88 (621), 10/12/89 (653), 08/09/90 (670)

(a) Owners or operators of air contaminant sources subject to Section 5.03 above shall, upon request by the Agency, make annual and/or periodic reports to the Agency regarding emission sources, types and amounts of raw materials used and air contaminants emitted, data on equipment and control equipment, stack heights, process weights, process flow, fuel composition, pollutant concentrations, and any other information directly related to air pollution registration requested by the Agency.

(b) Annual registration and periodic reporting for a source as required by the Agency shall be made by the owner or lessee of the source or his agent on forms provided by the Agency or in an Agency-approved format. The owner of the source shall be responsible for completion and submittal of the annual registration and/or periodic reports within 60 days of receipt of forms. The owner of the source shall be responsible for the correctness of the information submitted.

(c) A separate annual registration and separate periodic report shall be required for each facility which emits air contaminants.

(d) The confidentiality provisions of Section 3.19 shall be applicable in administering the registration and reporting program.

(e) Owners or operators of air contaminant sources subject to Section 5.03 above shall develop and implement an operation and maintenance plan to assure continuous compliance with Regulations I, II, and III. A copy of the plan shall be filed with the Control Officer upon request. The plan shall reflect good industrial practice and shall include, but not be limited to, the following:

(1) Periodic inspection of all equipment and control equipment;

(2) Monitoring and recording of equipment and control equipment performance;

(3) Prompt repair of any defective equipment or control equipment;

(4) Procedures for start up, shut down, and normal operation;

(5) The control measures to be employed to assure compliance with Section 9.15 of Regulation I;

(6) A record of all actions required by the plan.

The plan shall be reviewed by the source owner or operator at least annually and updated to reflect any changes in good industrial practice.

Mr. MCINTOSH. I particularly like your short form example of what they can do on that. And I will look at this and we'll also put the whole thing into the record for our official testimony.

I wanted to ask you real quickly, how receptive have the agencies been to your suggestions for improving their effort in those environmental areas?

Mr. KELLY. You're talking about the local agencies?

Mr. MCINTOSH. Yes.

Mr. KELLY. Well PSAPCA, the example that I've used, is an air agency that's been tasked by the State to perform for this region air quality control. When they developed this rule back in 1990, they came to us and asked us, telling us they needed to regulate this. And we participated then. And now, as the new Clean Air Act amendments are being applied, they've asked us again and we've been working very closely with them on a task force. I think it's productive, I think it's the way to go.

I'd make one other point that's in my statement to you, that we believe, and I think some of the local agencies and States also feel strongly about this. Decentralization of rules making, such as this, the details, environmental protection, if you will, have a place in these local jurisdictions. Where the national or the Federal standards need to be developed is in performance standards where you say this is what we want, this is what the minimum is or the maximum is. Now, you folks go do it. That gives a lot of flexibility, yet you get to the bottom line, which is what we're all about. It saves money, and I think it's the way to go.

I'd encourage you, Mr. Tate, anytime you're in the district, if you'd like to come see a metal finishing firm where regulations really take place on a daily basis, where these 140 regs are complied with by our company, I'd invite you and encourage you to do so.

Mr. MCINTOSH. Thank you for coming forward today. I appreciate that very much.

Mr. TATE. Thanks for waiting.

Mr. MCINTOSH. Exactly. At this point, Randy, do you have any closing statements and then we will adjourn this hearing.

Mr. TATE. I think two points. One, I appreciate your willingness to stay here till the last witness had the opportunity to testify. I think it's a credit to you, taking time away from your wife, Ruthie, to come all the way out here to the Northwest, and your staff and all their efforts are greatly appreciated, starting with your chief of staff, Mildred Webber.

A couple of points just in conclusion. I think there is a lot of room that we can work together with both business and labor for the same goals. We've heard some great suggestions from Senator Anderson and the legislative panel on what works, Mr. Smith gave some suggestions, Curt Anderson and others who are still here.

Nobody wants anybody to get hurt on the job. Nobody wants an unclean environment. I talked about my father who got hurt 20 years ago. He's better today, of course, but nobody wants that to happen to anybody's family. I think that's everybody's goal. But there also has to be something called common sense, which there has been a dearth of in recent years.

So with that, I think we've got some great ideas, I think we've got plenty of marching orders and suggestions, much followup, some investigation regarding Dr. Wright's situation. Our plate is full, and I think this was a worthwhile hearing and it's a credit to you, Mr. Chairman, for your willingness to listen.

Mr. MCINTOSH. My pleasure. It's a tremendously helpful hearing, and this will, along with some of the other things we've heard in these field hearings, I think create a very compelling record for Congress to act to solve these problems. And we're going to work on it this year. It may take some more of our colleagues next year in order to get that through. But I appreciate also the hard work you and your staff did in putting together this hearing for us. As always, you've done a great job, and I want to just close by saying thank you to everybody who participated today, all the witnesses on the panels and the witnesses who came and testified afterwards. Whether or not they agreed with the premise of the regulation, I appreciated hearing from everybody. So thank you.

And with that, the subcommittee now stands in adjournment.

[Whereupon, at 1:15 p.m., the subcommittee was adjourned.]

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